

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
RC PETITION**DO NOT WRITE IN THIS SPACE**

Case No.

01-RC-314865

Date Filed

3/27/2023

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov/, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. **The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.**

2a. Name of Employer: Eversource Energy		2b. Address(es) of Establishment(s) involved (Street and number, City, State, ZIP code): 780 N Commercial St, Manchester, NH 03101	
3a. Employer Representative - Name and Title: Marc Dionne, Manager Systems Operations		3b. Address (if same as 2b - state same): 780 N Commercial St, Manchester, NH 03101	
3c. Tel. No. (603) 634-3546	3d. Cell No. (603)345-4516	3e. Fax No.	3f. E-Mail Address Marc.Dionne@Eversource.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Energy		4b. Principal Product or Service Electricity	
5b. Description of Unit Involved: Included: See Attachment Excluded: See Attachment		5a. City and State where unit is located: Manchester, NH	
		6a. Number of Employees in Unit: 24	
		6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Check One: <input checked="" type="checkbox"/> 7a. Request for recognition as Bargaining Representative was made on (Date) 03/27/23 and Employer declined recognition on or about (Date) (If no reply received, so state). <input type="checkbox"/> 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.			
8a. Name of Recognized or Certified Bargaining Agent (If none, so state) None		8b. Address:	
8c. Tel. No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any:		8h. Date of Recognition or Certification	
		8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)	
9. Is there now a strike or picketing at the Employer's establishment(s) involved? No If so, approximately how many employees are participating? (Name of Labor Organization), has picketed the Employer since (Month, Day, Year)			
10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)			
10a. Name		10b. Address	
		10c. Tel. No.	
		10d. Cell No.	
		10e. Fax No.	
		10f. E-Mail Address	
11. Election Details: If the NLRB conducts and election in this matter, state your position with respect to any such election: Manual Election			11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail
11b. Election Date(s): April 18, 2023		11c. Election Time(s): 2:30 PM – 6:30	
		11d. Election Location(s): 780 N Commercial St, Manchester, NH 0310	
12a. Full Name of Petitioner (including local name and number): International Brotherhood of Electrical Workers IBEW Local 1837		12b. Address (street and number, city, State and ZIP code): 84 Bay Street, Manchester, NH 03104	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state): International Brotherhood of Electrical Workers			
12d. Tel. No. (603)743-1652	12e. Cell No. (978) 302-3690	12f. Fax No.	12g. E-Mail Address Steve Smith@IBEW.Org
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title: Steve Smith, IBEW Lead Organizer		13b. Address (street and number, city, State and ZIP code): 6 Bumpy Lane, Methuen MA 01844	
13c. Tel. No. (978)302-3690	13d. Cell No. (978) 302-3690	13e. Fax No.	13f. E-Mail Address Steve Smith@IBEW.Org
I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.			
Name (Print) Steve Smith		Signature Steve Smith	Title IBEW Lead Organizer
			Date 3/27/2023

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

RC PETITION – IBEW Local 1837 & Eversource Energy NH – ESCC

3/27/2023

5b. Description of Unit Involved:

Included:

All ESCC System Operators including Control Room Operator, Systems Operator, Shift Operation Supervisor, Shift Operation Supervisor Level 1 & Shift Operation Supervisor Level 2

Excluded:

All other employees, guards, professional employees, and supervisors as defined in the Act.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 1
Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Room 1002
Boston, MA 02222-1001

Agency Website: www.nlrb.gov
Telephone: (617)565-6700
Fax: (617)565-6725



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URGENT

March 27, 2023

steve_smith@ibew.org
Steve Smith, IBEW Lead Organizer
International Brotherhood of Electrical Workers Local 1837
84 Bay Street
Manchester, NH 03104

Re: Eversource Energy
Case 01-RC-314865

Dear Mr. Smith:

The enclosed petition that you filed with the National Labor Relations Board (NLRB) has been assigned the above case number. This letter tells you how to contact the Board agent who will be handling this matter; explains your obligation to provide the originals of the showing of interest and the requirement that you complete and serve a Responsive Statement of Position form in response to each timely filed and served Statement(s) of Position; notifies you of a hearing; describes the employer's obligation to post and distribute a Notice of Petition for Election, complete a Statement of Position and provide a voter list; requests that you provide certain information; notifies you of your right to be represented; and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Compliance Officer MEGAN M. NENTWICH whose telephone number is (857)317-7816. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If the agent is not available, you may contact Supervisory Field Examiner DINA M. RAIMO PELHAM whose telephone number is (959)200-7377. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Showing of Interest: If the Showing of Interest you provided in support of your petition was submitted electronically or by fax, the original documents which constitute the Showing of Interest containing handwritten signatures must be delivered to the Regional office within **2 business days**. If the originals are not received within that time the Region will dismiss your petition.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM on Friday, April 14, 2023, by videoconference**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, we will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Posting and Distribution of Notice: The Employer must post the enclosed Notice of Petition for Election by **April 3, 2023**, in conspicuous places, including all places where notices to employees are customarily posted. If it customarily communicates electronically with its employees in the petitioned-for unit, it must also distribute the notice electronically to them. The Employer must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the Notice of Election. Failure to post or distribute the notice may be grounds for setting aside the election if proper and timely objections are filed.

Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the Employer is required to complete the enclosed Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition by **noon Eastern Time on April 6, 2023**. The Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the Employer contends that the proposed unit is inappropriate, it must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The Employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit.

Required Responsive Statement of Position (RSOP): In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of a Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form addressing issues raised in any Statement(s) of Position. The petitioner must file a complete, signed RSOP in response to all other parties' timely filed and served Statement of Position, with all required attachments, with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on April 11, 2023**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will not be timely if filed on the due date but after noon Eastern Time.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

Failure to Supply Information: Failure to supply the information requested by the RSOP form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Voter List: If an election is held in this matter, the Employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names and addresses of all eligible voters, including their shifts, job classifications, work locations, and other contact information including available personal email addresses and available personal home and cellular telephone numbers. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the voter list with the Regional Office. However, a petitioner and/or union entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483, which is available on the NLRB's website or from an NLRB office. A waiver will not be effective unless all parties who are entitled to the voter list agree to waive the same number of days.

Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) The correct name of the Union as stated in its constitution or bylaws.
- (b) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any employees in the petitioned-for unit.
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) The name and contact information for any other labor organization (union) claiming to represent or have an interest in any of the employees in the petitioned-for unit and for any employer who may be a joint employer of the employees in the proposed unit. Failure to disclose the existence of an interested party may delay the processing of the petition.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before the NLRB. In view of our policy of processing these cases expeditiously, if you wish to be represented, you should obtain representation promptly. Your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was obtained only through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

* * *

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



LAURA A. SACKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)
7. Description of Voter List Requirement after Hearing in Certification and Decertification Cases (Form 5580)

cc: Steve Smith, IBEW Lead Organizer
6 Bumpy Lane
Methuen, MA 01844



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that International Brotherhood of Electrical Workers Local 1837 has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 01-RC-314865 seeking an election to become certified as the representative of the employees of Eversource Energy in the unit set forth below:

Included: All ESCC System Operators including Control Room Operator, Systems Operator, Shift Operation Supervisor, Shift Operation Supervisor Level 1 & Shift Operation Supervisor Level 2

Excluded: All other employees, guards, professional employees, and supervisors as defined in the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (617)565-6700.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01



Eversource Energy Employer and International Brotherhood of Electrical Workers Local 1837 Petitioner	Case 01-RC-314865
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Friday, April 14, 2023**, and on consecutive days thereafter until concluded, a hearing will be conducted by videoconference before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Eversource Energy must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on **April 06, 2023**. Following timely filing and service of a Statement of Position by Eversource Energy, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on **April 11, 2023**.

YOU ARE FURTHER NOTIFIED that at 2:00 PM Eastern time on **Wednesday, April 12, 2023**, the hearing officer will hold a pre-hearing teleconference to discuss the possibility of the parties reaching a stipulated election agreement, technical aspects of participants in a hearing, such as internet accessibility, the advance submission of exhibits, rules of conduct for hearing attendees, and, if necessary, subpoenaed documents, petitions to revoke or other pre-hearing motions. This office will provide the parties with the pre-hearing teleconference dial-in number and conference ID code.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlr.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: March 27, 2023



LAURA A. SACKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 01
Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Room 1002
Boston, MA 02222-1001

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<p>Eversource Energy</p> <p style="text-align: center;">Employer</p> <p style="text-align: center;">and</p> <p>International Brotherhood of Electrical Workers Local 1837</p> <p style="text-align: center;">Petitioner</p>	<p>Case 01-RC-314865</p>
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AFFIDAVIT OF SERVICE OF: Petition dated March 27, 2023, Notice of Representation Hearing dated March 27, 2023, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on March 27, 2023, I served the above documents by electronic mail upon the following persons, addressed to them at the following addresses:

Marc Dionne, Manager Systems Operations
Eversource Energy
780 N Commercial St
Manchester, NH 03101
marc.dionne@eversource.com

Steve Smith, IBEW Lead Organizer
International Brotherhood of Electrical
Workers Local 1837
84 Bay Street
Manchester, NH 03104
steve_smith@ibew.org

Steve Smith, IBEW Lead Organizer
6 Bumpy Lane
Methuen, MA 01844
steve_smith@ibew.org

March 27, 2023

Date

Dilirjona Vata, Designated Agent of NLRB

Name

/s/ **Dilirjona Vata**

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: *Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.*

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 01-RC-314865	Date Filed

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME

CASE NUMBER
01-RC-314865

1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION
OR FORMATION

B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES

4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

YES

NO

A. Did you **provide services** valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value.
\$ _____B. If you answered no to 9A, did you **provide services** valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____C. If you answered no to 9A and 9B, did you **provide services** valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____D. Did you **sell goods** valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____E. If you answered no to 9D, did you **sell goods** valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____F. Did you **purchase and receive goods** valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____G. Did you **purchase and receive goods** valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____H. **Gross Revenues** from all sales or performance of services (Check the largest amount)☐ \$100,000 ☐ \$250,000 ☐ \$500,000 ☐ \$1,000,000 or more If less than \$100,000, indicate amount.I. Did you **begin operations within the last 12 months**? If yes, specify date: _____

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME

TITLE

E-MAIL ADDRESS

TEL. NUMBER

12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)

SIGNATURE

E-MAIL ADDRESS

DATE

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
01-RC-314865

Date Filed

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer	An Intervenor/Union
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1a. Full Name of Party Filing Responsive Statement of Position			
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1c. Business Phone	1d. Cell No.	1e. Fax No.	1f. E-Mail Address
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1b. Address (Street and Number, City, State, and ZIP Code)			
--	--	--	--

2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

**DESCRIPTION OF VOTER LIST REQUIREMENT AFTER HEARING IN CERTIFICATION AND
DECERTIFICATION CASES**

If an election is directed, the employer must provide the voter list. To be timely filed and served, the voter list must be *received* by the Regional Director and the parties named in the Decision and Direction of Election within 2 business days after the issuance of the Decision unless a longer period, based on extraordinary circumstances, is specified in the Decision and Direction of Election. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The region will not serve the voter list.

List Contents - The list must include the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses and available home and personal cellular telephone numbers of all eligible voters). The Employer must also include in separate sections of that list the same information for those individuals the parties have agreed will be permitted to vote subject to challenge or those individuals who, according to the Decision and Direction of Election, will be permitted to vote subject to challenge.

List Format - The list must be in an electronic format approved by the General Counsel, unless the Employer certifies that it does not have the capacity to produce the list in the required format. Accordingly, unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at: **[www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)**.

It may be appropriate for the Employer to produce multiple versions of the list where the data required is kept in separate databases or files so long as all of the lists link the information to the same employees, using the same names, in the same order and are provided within the allotted time. If the Employer provides multiple lists, the list used at the election will be the list containing the employees' names and addresses.

Filing of the List - The voter list must be filed electronically by submitting (E-Filing) it through the Agency's website (www.nlr.gov), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to www.nlr.gov, click on *E-File Case Documents*, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party. If you have questions about the submission, please promptly contact the Board agent investigating the petition.

Service of the List - The list must be served on the parties named in the Decision and Direction of Election within 2 business days after issuance of the Decision, unless another date has been specified. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The Employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

The parties are not allowed to use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 1
Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Room 1002
Boston, MA 02222-1001

Agency Website: www.nlr.gov
Telephone: (617)565-6700
Fax: (617)565-6725



Download
NLRB
Mobile App

URGENT

March 27, 2023

marc.dionne@eversource.com
Marc Dionne, Manager Systems Operations
Eversource Energy
780 N Commercial St
Manchester, NH 03101

Re: Eversource Energy
Case 01-RC-314865

Dear Mr. Dionne:

Enclosed is a copy of a petition that International Brotherhood of Electrical Workers Local 1837 filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. After a petition is filed, the employer is required to promptly take certain actions so please read this letter carefully to make sure you are aware of the employer's obligations. This letter tells you how to contact the Board agent who will be handling this matter, about the requirement to post and distribute the Notice of Petition for Election, the requirement to complete and serve a Statement of Position Form, the Petitioner's requirement to complete and serve a Responsive Statement of Position Form, a scheduled hearing in this matter, other information needed including a voter list, your right to be represented, and NLRB procedures, including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Compliance Officer MEGAN M. NENTWICH whose telephone number is (857)317-7816. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner DINA M. RAIMO PELHAM whose telephone number is (959)200-7377. The Board agent may also contact you and the other party or parties to schedule a conference meeting or telephonic or video conference for some time before the close of business the day following receipt of the final Responsive Statement(s) of Position. This will give the parties sufficient time to determine if any issues can be resolved prior to hearing or if a hearing is necessary. If appropriate, the NLRB attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Required Posting and Distribution of Notice: You must post the enclosed Notice of Petition for Election by **April 3, 2023**, in conspicuous places, including all places where notices to employees are customarily posted. The Notice of Petition for Election must be posted so all pages are simultaneously visible. If you customarily communicate electronically with employees in the petitioned-for unit, you must also distribute the notice electronically to them. You must maintain the posting until the petition is dismissed or withdrawn or this notice is replaced by the

Notice of Election. Posting and distribution of the Notice of Petition for Election will inform the employees whose representation is at issue and the employer of their rights and obligations under the National Labor Relations Act in the representation context. Failure to post or distribute the notice may be grounds for setting aside an election if proper and timely objections are filed.

Required Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, the employer is required to complete the enclosed Statement of Position form (including the attached Commerce Questionnaire), have it signed by an authorized representative, and file a completed copy (with all required attachments) with this office and serve it on all parties named in the petition such that it is received by them by **noon Eastern Time on April 06, 2023**. This form solicits information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. **This form must be e-Filed, but unlike other e-Filed documents, will *not* be timely if filed on the due date but after noon April 06, 2023.** If you have questions about this form or would like assistance in filling out this form, please contact the Board agent named above.

List(s) of Employees: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)

Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under Section 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing,

from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§ 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Responsive Statement of Position: In accordance with Section 102.63(b) of the Board's Rules, following timely filing and service of an employer's Statement of Position, the petitioner is required to complete the enclosed Responsive Statement of Position form, have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in the employer's Statement of Position, such that it is received no later than **noon Eastern Time on April 11, 2023**.

Notice of Hearing: Enclosed is a Notice of Representation Hearing to be conducted at **10:00 AM on Friday, April 14, 2023, by videoconference**, if the parties do not voluntarily agree to an election. If a hearing is necessary, the hearing will run on consecutive days until concluded unless the regional director concludes that extraordinary circumstances warrant otherwise. Before the hearing begins, the NLRB will continue to explore potential areas of agreement with the parties in order to reach an election agreement and to eliminate or limit the costs associated with formal hearings.

Upon request of a party showing good cause, the regional director may postpone the hearing. A party desiring a postponement should make the request to the regional director in writing, set forth in detail the grounds for the request, and include the positions of the other parties regarding the postponement. E-Filing the request is required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Other Information Needed Now: Please submit to this office, as soon as possible, the following information needed to handle this matter:

- (a) A copy of any existing or recently expired collective-bargaining agreements, and any amendments or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

- (b) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;
- (c) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any.
- (d) If you desire a formal check of the showing of interest, you must provide an alphabetized payroll list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. Such a payroll list should be submitted as early as possible prior to the hearing. Ordinarily a formal check of the showing of interest is not performed using the employee list submitted as part of the Statement of Position.

Voter List: If an election is held in this matter, the employer must transmit to this office and to the other parties to the election, an alphabetized list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular telephone numbers) of eligible voters. Usually, the list must be furnished within 2 business days of the issuance of the Decision and Direction of Election or approval of an election agreement. I am advising you of this requirement now, so that you will have ample time to prepare this list. The list must be electronically filed with the Region and served electronically on the other parties. To guard against potential abuse, this list may not be used for purposes other than the representation proceeding, NLRB proceedings arising from it or other related matters.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any “inside knowledge” or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Procedures: Pursuant to Section 102.5 of the Board’s Rules and Regulations, parties must submit all documentary evidence, including statements of position, exhibits, sworn statements, and/or other evidence, by electronically submitting (E-Filing) them through the Agency’s web site (www.nlr.gov). You must e-file all documents electronically or provide a written statement explaining why electronic submission is not possible or feasible. Failure to comply with Section 102.5 will result in rejection of your submission. The Region will make its determinations solely based on the documents and evidence properly submitted. All evidence submitted electronically should be in the form in which it is normally used and maintained in the course of business (i.e., native format). Where evidence submitted electronically is not in native format, it should be submitted in a manner that retains the essential functionality of the native

format (i.e., in a machine-readable and searchable electronic format). If you have questions about the submission of evidence or expect to deliver a large quantity of electronic records, please promptly contact the Board agent investigating the petition.

Controlled Unclassified Information (CUI): This National Labor Relations Board (NLRB) proceeding may contain Controlled Unclassified Information (CUI). Subsequent information in this proceeding may also constitute CUI. National Archives and Records Administration (NARA) regulations at 32 CFR Part 2002 apply to all executive branch agencies that designate or handle information that meets the standards for CUI.

* * *

Information about the NLRB and our customer service standards is available on our website, www.nlr.gov, or from an NLRB office upon your request. We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,



LAURA A. SACKS
Regional Director

Enclosures

1. Petition
2. Notice of Petition for Election (Form 5492)
3. Notice of Representation Hearing
4. Description of Procedures in Certification and Decertification Cases (Form 4812)
5. Statement of Position form and Commerce Questionnaire (Form 505)
6. Responsive Statement of Position (Form 506)
7. Description of Voter List Requirement after Hearing in Certification and Decertification Cases (Form 5580)



National Labor Relations Board



NOTICE OF PETITION FOR ELECTION

This notice is to inform employees that International Brotherhood of Electrical Workers Local 1837 has filed a petition with the National Labor Relations Board (NLRB), a Federal agency, in Case 01-RC-314865 seeking an election to become certified as the representative of the employees of Eversource Energy in the unit set forth below:

Included: All ESCC System Operators including Control Room Operator, Systems Operator, Shift Operation Supervisor, Shift Operation Supervisor Level 1 & Shift Operation Supervisor Level 2

Excluded: All other employees, guards, professional employees, and supervisors as defined in the Act.

This notice also provides you with information about your basic rights under the National Labor Relations Act, the processing of the petition, and rules to keep NLRB elections fair and honest.

YOU HAVE THE RIGHT under Federal Law

- To self-organization
- To form, join, or assist labor organizations
- To bargain collectively through representatives of your own choosing
- To act together for the purposes of collective bargaining or other mutual aid or protection
- To refuse to do any or all of these things unless the union and employer, in a state where such agreements are permitted, enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustments).

PROCESSING THIS PETITION

Elections do not necessarily occur in all cases after a petition is filed. **NO FINAL DECISIONS HAVE BEEN MADE YET** regarding the appropriateness of the proposed unit or whether an election will be held in this matter. If appropriate, the NLRB will first see if the parties will enter into an election agreement that specifies the method, date, time, and location of an election and the unit of employees eligible to vote. If the parties do not enter into an election agreement, usually a hearing is held to receive evidence on the appropriateness of the unit and other issues in dispute. After a hearing, an election may be directed by the NLRB, if appropriate.

IF AN ELECTION IS HELD, it will be conducted by the NLRB by secret ballot and Notices of Election will be posted before the election giving complete details for voting.

ELECTION RULES

The NLRB applies rules that are intended to keep its elections fair and honest and that result in a free choice. If agents of any party act in such a way as to interfere with your right to a free election, the election can be set aside by the NLRB. Where appropriate the NLRB provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with employees' rights and may result in setting aside the election:

- Threatening loss of jobs or benefits by an employer or a union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An employer firing employees to discourage or encourage union activity or a union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or, if the election is conducted by mail, from the time and date the ballots are scheduled to be sent out by the Region until the time and date set for their return
- Incitement by either an employer or a union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a union or an employer to influence their votes

Please be assured that IF AN ELECTION IS HELD, every effort will be made to protect your right to a free choice under the law. Improper conduct will not be permitted. All parties are expected to cooperate fully with the NLRB in maintaining basic principles of a fair election as required by law. The NLRB as an agency of the United States Government does not endorse any choice in the election.

For additional information about the processing of petitions, go to www.nlr.gov or contact the NLRB at (617)565-6700.

THIS IS AN OFFICIAL GOVERNMENT NOTICE AND MUST NOT BE DEFACED BY ANYONE. IT MUST REMAIN POSTED WITH ALL PAGES SIMULTANEOUSLY VISIBLE UNTIL REPLACED BY THE NOTICE OF ELECTION OR THE PETITION IS DISMISSED OR WITHDRAWN.



National Labor Relations Board





UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01



Eversource Energy Employer and International Brotherhood of Electrical Workers Local 1837 Petitioner	Case 01-RC-314865
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NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 10:00 AM on **Friday, April 14, 2023**, and on consecutive days thereafter until concluded, a hearing will be conducted by videoconference before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.63(b) of the Board's Rules and Regulations, Eversource Energy must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that it is received by them by no later than **noon** Eastern time on **April 06, 2023**. Following timely filing and service of a Statement of Position by Eversource Energy, the Petitioner must complete its Responsive Statement of Position(s) responding to the issues raised in the Employer's and/or Union's Statement of Position and file them and all attachments with the Regional Director and serve them on the parties named in the petition such they are received by them no later than **noon** Eastern on **April 11, 2023**.

YOU ARE FURTHER NOTIFIED that at 2:00 PM Eastern time on **Wednesday, April 12, 2023**, the hearing officer will hold a pre-hearing teleconference to discuss the possibility of the parties reaching a stipulated election agreement, technical aspects of participants in a hearing, such as internet accessibility, the advance submission of exhibits, rules of conduct for hearing attendees, and, if necessary, subpoenaed documents, petitions to revoke or other pre-hearing motions. This office will provide the parties with the pre-hearing teleconference dial-in number and conference ID code.

Pursuant to Section 102.5 of the Board's Rules and Regulations, all documents filed in cases before the Agency must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlr.gov), unless the party filing the document does not have access to the means for filing electronically or filing electronically would impose an undue burden. Documents filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#)

The Statement of Position and Responsive Statement of Position must be E-Filed but, unlike other E-Filed documents, must be filed by **noon** Eastern on the due date in order to be timely. If an election agreement is signed by all parties and returned to the Regional Office before the due date of the Statement of Position, the Statement of Position and Responsive Statement of Position are not required to be filed. If an election agreement is signed by all parties and returned to the Regional office after the due date of the Statement of Position but before the due date of the Responsive Statement of Position, the Responsive Statement of Position is not required to be filed.

Dated: March 27, 2023



LAURA A. SACKS
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 01
Thomas P. O'Neill Jr. Federal Building
10 Causeway St, Room 1002
Boston, MA 02222-1001

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

<p>Eversource Energy</p> <p style="text-align: center;">Employer</p> <p style="text-align: center;">and</p> <p>International Brotherhood of Electrical Workers Local 1837</p> <p style="text-align: center;">Petitioner</p>	<p>Case 01-RC-314865</p>
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AFFIDAVIT OF SERVICE OF: Petition dated March 27, 2023, Notice of Representation Hearing dated March 27, 2023, Description of Procedures in Certification and Decertification Cases (Form NLRB-4812), Notice of Petition for Election, and Statement of Position Form (Form NLRB-505).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on March 27, 2023, I served the above documents by electronic mail upon the following persons, addressed to them at the following addresses:

Marc Dionne, Manager Systems Operations
Eversource Energy
780 N Commercial St
Manchester, NH 03101
marc.dionne@eversource.com

Steve Smith, IBEW Lead Organizer
International Brotherhood of Electrical
Workers Local 1837
84 Bay Street
Manchester, NH 03104
steve_smith@ibew.org

Steve Smith, IBEW Lead Organizer
6 Bumpy Lane
Methuen, MA 01844
steve_smith@ibew.org

March 27, 2023

Date

Dilirjona Vata, Designated Agent of NLRB

Name

/s/ **Dilirjona Vata**

Signature

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlr.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews the petition, certificate of service, and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 14 business days (excluding weekends and federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position and the Responsive Statement of Position(s). Included with the Notice of Representation Hearing are the following: (1) copy of the petition, (2) this form, (3) Statement of Position for non-petitioning parties, (4) petitioner's Responsive Statement of Position, (5) Notice of Petition for Election, and (6) letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: Requests to postpone the hearing are not routinely granted, but the regional director may postpone the hearing for good cause. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request must be filed electronically ("E-Filed") on the Agency's website (www.nlr.gov) by following the instructions on the website. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. In an **RC** or **RD** case, as part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional

form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon 8 business days from the issuance of the Notice of Hearing. The regional director may postpone the due date for filing and serving the Statement of Position for good cause. The Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Responsive Statement of Position – Petitioner's Responsive Statement(s) of Position solicits a response to the Statement(s) of Position filed by the other parties and further facilitates entry into election agreements or streamlines the preelection hearing. A petitioner must file a Responsive Statement of Position in response to each party's Statement of Position addressing each issue in each Statement of Position(s), if desired. In the case of an RM petition, the employer-petitioner must also provide commerce information and file and serve a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. Ordinarily, the Responsive Statement of Position must be electronically filed with the Regional Office and served on the other parties such that it is received by noon 3 business days prior to the hearing. The regional director may postpone the due date for filing and serving the Responsive Statement of Position for good cause. The Responsive Statement of Position form must be E-Filed but, unlike other E-Filed documents, will not be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Responsive Statement of Position requirement are discussed on the following page under the heading "Preclusion." A request to postpone the hearing will not automatically be treated as a request for an extension of the Responsive Statement of Position due date. If a party wishes to request both a postponement of the hearing and a Postponement of the Responsive Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 5 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically to the employees in the petitioned-for unit if the employer customarily communicates with these employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The primary purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit

appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; seasonal operation; potential mixed guard/non-guard unit; and eligibility formulas. At the hearing, the timely filed Statement of Position and Responsive Statement of Position(s) will be received into evidence. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or Responsive Statement of Position(s) or to place in dispute in timely response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have disabilities falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.) All statements made at the hearing will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of law. Post-hearing briefs shall be due within 5 business days of the close of the hearing. The hearing officer may allow up to 10 additional business days for such briefs prior to the close of hearing and for good cause. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. Briefs including electronic documents, filed with the Regional Director must be formatted as double-spaced in an 8½ by 11 inch format and must be e-filed through the Board's website, www.nlr.gov.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 10 business days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge. The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction. To be timely filed and served, the voter list must be received by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction of elections unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 calendar days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A STATEMENT OF POSITION FORM

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must EFile your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx).

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No. 01-RC-314865	Date Filed

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.

Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit.			
Added		Excluded	
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an appropriate unit. (Attachment D)			
8a. State your position with respect to the details of any election that may be conducted in this matter. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

QUESTIONNAIRE ON COMMERCE INFORMATION

Please read carefully, answer all applicable items, and return to the NLRB Office. If additional space is required, please add a page and identify item number.

CASE NAME	CASE NUMBER 01-RC-314865
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1. EXACT LEGAL TITLE OF ENTITY (As filed with State and/or stated in legal documents forming entity)

2. TYPE OF ENTITY

☐ CORPORATION ☐ LLC ☐ LLP ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER (Specify)

3. IF A CORPORATION or LLC

A. STATE OF INCORPORATION OR FORMATION	B. NAME, ADDRESS, AND RELATIONSHIP (e.g. parent, subsidiary) OF ALL RELATED ENTITIES
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4. IF AN LLC OR ANY TYPE OF PARTNERSHIP, FULL NAME AND ADDRESS OF ALL MEMBERS OR PARTNERS

5. IF A SOLE PROPRIETORSHIP, FULL NAME AND ADDRESS OF PROPRIETOR

6. BRIEFLY DESCRIBE THE NATURE OF YOUR OPERATIONS (Products handled or manufactured, or nature of services performed).

7A. PRINCIPAL LOCATION:

7B. BRANCH LOCATIONS:

8. NUMBER OF PEOPLE PRESENTLY EMPLOYED

A. TOTAL:

B. AT THE ADDRESS INVOLVED IN THIS MATTER:

9. DURING THE MOST RECENT (Check the appropriate box): ☐ CALENDAR ☐ 12 MONTHS or ☐ FISCAL YEAR (FY DATES _____)

	YES	NO
A. Did you provide services valued in excess of \$50,000 directly to customers outside your State? If no, indicate actual value. \$ _____		
B. If you answered no to 9A, did you provide services valued in excess of \$50,000 to customers in your State who purchased goods valued in excess of \$50,000 from directly outside your State? If no, indicate the value of any such services you provided. \$ _____		
C. If you answered no to 9A and 9B, did you provide services valued in excess of \$50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, or retail concerns? If less than \$50,000, indicate amount. \$ _____		
D. Did you sell goods valued in excess of \$50,000 directly to customers located outside your State? If less than \$50,000, indicate amount. \$ _____		
E. If you answered no to 9D, did you sell goods valued in excess of \$50,000 directly to customers located inside your State who purchased other goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
F. Did you purchase and receive goods valued in excess of \$50,000 from directly outside your State? If less than \$50,000, indicate amount. \$ _____		
G. Did you purchase and receive goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside your State? If less than \$50,000, indicate amount. \$ _____		
H. Gross Revenues from all sales or performance of services (Check the largest amount) <input type="checkbox"/> \$100,000 <input type="checkbox"/> \$250,000 <input type="checkbox"/> \$500,000 <input type="checkbox"/> \$1,000,000 or more If less than \$100,000, indicate amount.		
I. Did you begin operations within the last 12 months? If yes, specify date: _____		

10. ARE YOU A MEMBER OF AN ASSOCIATION OR OTHER EMPLOYER GROUP THAT ENGAGES IN COLLECTIVE BARGAINING?

☐ YES ☐ NO (If yes, name and address of association or group).

11. REPRESENTATIVE BEST QUALIFIED TO GIVE FURTHER INFORMATION ABOUT YOUR OPERATIONS

NAME	TITLE	E-MAIL ADDRESS	TEL. NUMBER
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12. AUTHORIZED REPRESENTATIVE COMPLETING THIS QUESTIONNAIRE

NAME AND TITLE (Type or Print)	SIGNATURE	E-MAIL ADDRESS	DATE
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PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information may cause the NLRB to refuse to process any further a representation or unfair labor practice case, or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

REVIEW THE FOLLOWING IMPORTANT INFORMATION BEFORE FILLING OUT A RESPONSIVE STATEMENT OF POSITION FORM

Completing and Filing this Form: For **RC and RD petitions**, the Petitioner is required to complete this form in response to each timely filed and served Statement of Position filed by another party. For **RM petitions**, the Employer-Petitioner must complete a Responsive Statement of Position form and submit the list described below. In accordance with Section 102.63(b) of the Board's Rules, if you are required to complete the form, you must have it signed by an authorized representative, and file a completed copy with any necessary attachments, with this office and serve it on all parties named in the petition responding to the issues raised in another party's Statement of Position, such that it is received no later than noon three business days before the date of the hearing. A separate form must be completed for each timely filed and properly served Statement of Position you receive. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You must E-File your Responsive Statement of Position at www.NLRB.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed. Note that if you are completing this form as a PDF downloaded from www.NLRB.gov, the form will lock upon signature and no further editing may be made.**

Required List: In addition to responding to the issues raised in another party's Statement of Position, if any, the Employer-Petitioner in an RM case is required to file and serve on the parties a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. This list must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the list in the required form, the list must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx

Consequences of Failure to Submit a Responsive Statement of Position: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RESPONSIVE STATEMENT OF POSITION – RC, RD or RM PETITION

DO NOT WRITE IN THIS SPACE

Case No.
01-RC-314865

Date Filed

INSTRUCTIONS: If a party has submitted and served on you a timely Statement of Position to an RC, RD or RM petition, the Petitioner must submit this Responsive Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and any attachments on each party named in the petition in this case such that it is received by noon local time, three business days prior to the hearing date specified in the Notice of Hearing. A separate form must be completed for each timely filed and properly served Statement of Position received by the Petitioner. The Petitioner-Employer in a RM case is required to file this Responsive Statement of Position and include an appropriate employee list without regard to whether another party has filed a Statement of Position.

This Responsive Statement of Position is filed by the Petitioner in response to a Statement of Position received from the following party:

The Employer	An Intervenor/Union
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1a. Full Name of Party Filing Responsive Statement of Position			
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1c. Business Phone	1d. Cell No.	1e. Fax No.	1f. E-Mail Address
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1b. Address (Street and Number, City, State, and ZIP Code)			
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2. Identify all issues raised in the other party's Statement of Position that you dispute and describe the basis of your dispute:

a. EMPLOYER NAME/IDENTITY [Box 1a of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

b. JURISDICTION [Box 2 of Statement of Position Form NLRB-505 and Questionnaire on Commerce Information]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

c. APPROPRIATENESS OF UNIT [Boxes 3, 3a and 3b of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

d. INDIVIDUAL ELIGIBILITY [Box 4 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

e. BARS TO ELECTION [Box 5 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

f. ALL OTHER ISSUES [Box 6 of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

g. ELECTION DETAILS [Boxes 8a, 8b, 8c, 8d, 8e, 8f, and 8g of Statement of Position Form NLRB-505]

☐ No Dispute (no further response required) ☐ Dispute (response required below)

Response to Statement of Position:

Full Name and Title of Authorized Representative	Signature of Authorized Representative	Date
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

Please fill all necessary fields on the form PRIOR to digitally signing. To make changes after the form has been signed, right-click on the signature field and click "clear signature." Once complete, please sign the form.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

**DESCRIPTION OF VOTER LIST REQUIREMENT AFTER HEARING IN CERTIFICATION AND
DECERTIFICATION CASES**

If an election is directed, the employer must provide the voter list. To be timely filed and served, the voter list must be *received* by the Regional Director and the parties named in the Decision and Direction of Election within 2 business days after the issuance of the Decision unless a longer period, based on extraordinary circumstances, is specified in the Decision and Direction of Election. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The region will not serve the voter list.

List Contents - The list must include the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses and available home and personal cellular telephone numbers of all eligible voters). The Employer must also include in separate sections of that list the same information for those individuals the parties have agreed will be permitted to vote subject to challenge or those individuals who, according to the Decision and Direction of Election, will be permitted to vote subject to challenge.

List Format - The list must be in an electronic format approved by the General Counsel, unless the Employer certifies that it does not have the capacity to produce the list in the required format. Accordingly, unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at: **[www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional Forms for Voter List.docx](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-4559/Optional%20Forms%20for%20Voter%20List.docx)**.

It may be appropriate for the Employer to produce multiple versions of the list where the data required is kept in separate databases or files so long as all of the lists link the information to the same employees, using the same names, in the same order and are provided within the allotted time. If the Employer provides multiple lists, the list used at the election will be the list containing the employees' names and addresses.

Filing of the List - The voter list must be filed electronically by submitting (E-Filing) it through the Agency's website (www.nlr.gov), unless the Employer provides a written statement explaining why electronic submission is not possible or feasible. The Employer must also electronically serve the list on the other parties. To file electronically, go to www.nlr.gov, click on *E-File Case Documents*, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list is on the sending party. If you have questions about the submission, please promptly contact the Board agent investigating the petition.

Service of the List - The list must be served on the parties named in the Decision and Direction of Election within 2 business days after issuance of the Decision, unless another date has been specified. A certificate of service on all parties must be filed with the Regional Director when the voter list is filed. The Employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

The parties are not allowed to use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION ONE**

In re:)	
)	
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 1837,)	
)	
Petitioner)	
)	
v.)	Case No. 01-RC-314865
)	
PUBLIC SERVICE OF NEW HAMPSHIRE))	
D/B/A EVERSOURCE ENERGY,)	
)	
Employer)	

POST-HEARING BRIEF FOR THE PETITIONER

Introduction

International Brotherhood of Electrical Workers, Local 1837 (“Petitioner,” “Local 1837” or “the Union”) seeks to represent a unit of Operations Shift Supervisors and System Operations Supervisors at Public Service of New Hampshire d/b/a Eversource Energy (“the Employer” or “Eversource”) who work in the Transmission Control Center (“ESCC”) in Manchester, New Hampshire.¹ Eversource claims that the Shift Supervisors should be excluded from the unit because they purportedly assign and direct employees within the meaning of Section 2(11) of the National Labor Relations Act. See Board Exhibit 4.² In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006), the National Labor Relations Board stated, “we construe the term “assign” to

¹ At hearing, the Employer’s witnesses referred to the six Operations Shift Supervisors as Rotating Shift Supervisors, or RSS’s, while the Petitioner’s witnesses referred to them as Shift Supervisors. In this brief, Petitioner continues to use the term “Shift Supervisor” to refer to the six Operations Shift Supervisors. Petitioner refers to the eighteen System Operations Supervisors (including both those at Level 1 or Level 2) as “Operators.”

² Henceforth, all references to Board Exhibits shall be cited as “BDX,” all Employer Exhibits as “CX,” and all Petitioner Exhibits as “PX,” followed by the exhibit number. All references to the transcript shall be cited as “TR” followed by the page and line number.

refer to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” The Board further declared that “to constitute ‘responsible’ direction the person performing the oversight must be held accountable for the performance of the task, and must have some authority to correct any errors made.” *Id.* at 695. Finally, the putative supervisor must use independent judgment, which involves the exercise of discretion which is not “routine or clerical” and is not “dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* at 693.

Here, the record evidence compellingly demonstrates that the Shift Supervisors do not assign Operators or field employees to a place or time and do not give significant tasks to an employees. Shift Supervisors and Operators perform the same tasks, writing switching orders and switching and tagging energized lines to make them safe to work on during planned maintenance and unplanned outages. Operators and Shift Supervisors report to the ESCC at fixed shift times and work is distributed by consensus. Field employees report to field supervisors and are organized geographically, which governs which employees respond to outages. Shift Supervisors (and Operators) speak regularly with the three Day Supervisors and have a dedicated cell phone to consult about how to respond to unplanned outages. Field supervisors, not the Shift Supervisors, determine whether field staff will work overtime. Shift Supervisors are accountable for their own mistakes, not the errors of the Operators or field staff.

Notably, in cases involving the supervisory status of employees working for electric utilities performing similar work to that performed by the Shift Supervisors here, both this and other regions of the Board repeatedly have concluded that such employees are not Section 2(11)

supervisors. See, e.g. *Atlantic City Elec. Co.*, 369 NLRB No. 33 (2020), *enf'd*, 5 F.4th 298 (3d Cir. 2021); *NSTAR Electric & Gas Co., Inc.*, Case 01-RC-112623, slip op. at 13 (Jan. 3, 2014), *aff'd*, 360 NLRB No. 106 (2014), *enf'd*, 798 F. 3d 1 (1st Cir. 2015); *Northeast Utilities Services Corp.*, 313 NLRB No. 65; *enf'd*, 35 F.3d 621 (1st Cir. 1994), *cert. denied*, 514 U.S. 1015 (1995). See also *Entergy Mississippi*, 357 NLRB 2150 (2011), *remanded*, 810 F.3d 287 (5th Cir. 2015), *rev'd upon remand*, 367 NLRB No. 109 (2019), *aff'd*, 973 F.3d 451 (5th Cir. 2020).

Under the facts presented here, like those in the other electric utility cases decided by the Board, the Shift Supervisors do not meet the definition of a statutory supervisor under Section 2(11) of the Act. Accordingly, the Region should find that the six Shift Supervisors are eligible to participate in the representation election.

Statement of Facts

The Employer operates a facility based in Manchester, New Hampshire which oversees the transmission and distribution of electrical power to residential, commercial, and industrial customers throughout the State of New Hampshire. TR 22:10-11, 31:7-11, 49:1, 521:4, 528:13-529:8; CX 21; BDX 2. Eversource is part of a larger grid of other similar utilities which supply electrical power throughout New England. TR 27:11-14, 32:15-20; CX 1. Several of these similar utilities which transmit and distribute electrical power in New England are also owned by Eversource, including NSTAR and WMECO in Massachusetts and Connecticut Light and Power (now called CONVEX) in Connecticut. See TR 29:14-30:15, 321:5-11, 543:18-19; PX 17 (training checklist used by Eversource for Connecticut, Massachusetts, and New Hampshire subsidiaries). Eversource's operations throughout New England and those of the other utilities that are part of the grid are governed extensively by federal regulations and industry groups to ensure the safe and reliable delivery of energy. See TR 35:9-14 (transmission of 69 KV is

overseen by the Department of Energy, the Federal Energy Regulatory Commission, and the North American Electric Reliability Corporation), TR 269:21-271:18. See also TR 38:5-12 (reliability standards established by Northeast Power Coordinating Council including New England, Montreal, Quebec, and Ontario).

To transmit and deliver power, the Employer operates two control centers in its Manchester, New Hampshire facility which are part of NH System Operations. CX 2; PX 28.³ The two control centers are the ESCC (Transmission Control Center) and the SOC (Systems Operation Center). TR 22:7-11 and 17-19. The ESCC oversees the transmission and distribution of high voltage electricity from generating stations to substations and beyond, while the SOC oversees the distribution of lower voltage power to customers throughout the State. TR 40:9-19, 41:23-42:13, 63:9-12.

NH Electric System Operations is staffed by Vice President of Operations, Brian Dickie; a Director of Operations, David Cloutier, who reports to Dickie; a Manager of ESCC, Mark Dionne, who reports to Cloutier; three (3) Day Supervisors, Adrian Zanetti, Ron Messier, and Andrew Grady, who report to Dionne; and six (6) Shift Supervisors and eighteen (18) Level I and Level II Operators. TR 241:12-242:14, 246:20-25, 252:23-254:12; CX 2. The Level I and II Operators do **not** report to the Shift Supervisors; rather, with one exception, they report to the three Day Supervisors. TR 249:24-252:3, 253:20-255:21, 258:13-19, 402:16-25, 508:7-17, 520:21-24; CX 2.⁴ Thus, Dickie, the Employer's principal witness at the hearing, was four levels removed from the Shift Supervisors and Operators. TR 243:11-14, 245:25-246:3.

³ CX 2 and PX 28 are identical with respect to the Transmission Control Center but differ as to the Systems Operations Center. Since the issue at bar concerns the former, Petitioner cites to CX 2 herein.

⁴ Until days before the hearing, there was a similar reporting structure in the SOC, with Operators there reporting to supervisors rather than to team leads. TR 263:12-20, 264:12-17.

Two of the Day Supervisors typically work slightly staggered eight-hour shifts in offices at the ESCC from approximately 5AM-3PM while the third Day Supervisor generally works from home. TR 401:7-22, 402:22-24, 407:15-408:8, 521:7-11. One Day Shift Supervisor is always on-call during the evening, but the other two Day Supervisors may also be reached by phone if necessary. TR 525:2-14. The Shift Supervisors (and Operators) are in constant contact with the Day Supervisors throughout the day and night as issues arise. TR 406:2-25, 525:2-14. The Shift Supervisors have a dedicated cell phone in the control center which they use to communicate with the Day Supervisor and upper management as required when abnormal conditions are present on the System. TR 328:14-16, 403:4-21, 407:6-14. The Day Supervisor is “Subject matter expert in providing operational/guidance to Operations support group” and “provides guidance to System Operators in the resolution of system operating issues, including personnel, equipment, safety, reliability, adherence to operating requirements, and congestion management.” TR 331:3-16; PX 21.

The six Shift Supervisors and eighteen Operators are divided into six teams consisting of one Shift Supervisor and two to three Operators. TR 247:1-9, 508:1-6; CX 4; BDX 4. The six teams work rotating 12-hour shifts from 6AM-6PM and 6PM-6AM when overseeing operations and 8-hour shifts from 7AM-3PM when serving as spares, receiving training, or switch writing. *Id.* The schedule repeats itself every 6 weeks. TR 305:13-20. The ESCC control room where they work in Manchester has a 70-foot mapboard from which the teams can view the entire New Hampshire Eversource Transmission and Distribution System. TR 401:1-6, 402:9-11. There are seven desks where the Shift Supervisors and Operators work, with Operators in the front row and the Shift Supervisor behind; these are equipped with monitors from which they can isolate and manipulate various parts of the system for purposes of turning power on and off so that linemen

in the field can do planned maintenance on the lines and in case of unplanned outages can safely restore power. TR 402:12-22, 535:12-536:14.

Newly hired Operators undergo extensive 3-4 months training led by a separate training department with assistance from the Shift Supervisors and Operators before they are permitted to work live on the system. TR 519:19-22, PX 16 and 17. According to Operator Brendan von Koss, who became a Level 1 Operator approximately one year ago, and Shift Supervisor Aaron Rossi, a member of the training department must initial each task “complete” in PX 16 before the trainee can begin working live.⁵ TR 510:9-14.

Operators typically progress from Level 1 to Level 2 in about 12 to 18 months. To do so, they must demonstrate mastery of functions set forth in PX 17. Although any Shift Supervisor (or Operator) can sign off that the Level 1 Operator has successfully completed the various tasks, the Shift Supervisor has no authority to promote an Operator from Level 1 to Level 2. TR 510:24-511:2. Only the Day Supervisor can do so, although he may on occasion ask the Shift Supervisor or another Level II Operator how an Operator is doing. TR 591:11-15, 607:7-12.

The six Shift Supervisor positions were created in 2018 and first filled in 2019. TR 265:16-19. Operators had to apply for the positions. TR 266:12-15. Some of the senior Operators, including Marshall Diamond and John Duckless, did not apply. TR 397:9-14. Eversource filled the positions with the senior and more experienced Operators who did apply. TR 397:5-8. According to Shift Supervisor Aaron Rossi, the Shift Supervisor positions were created to provide another step in the line of progression for the Operators. TR 396:14-20.

⁵ David Cloutier, Director of Systems Operation, claimed that PX 16 was simply used to inform the trainees of what they were expected to know before going live and that the trainees initial the task as “complete” themselves. TR 590:4-11. However, Cloutier never worked for Eversource as an Operator. TR 588:23-589:1. Given the consequences of mistakes by the Operators, which can lead to outages and even blackouts, it would make no sense to permit the trainees to evaluate themselves.

The Day Supervisors, Shift Supervisors, and Operators are all salaried. TR 257:4-20. Day Supervisors are in a different pay band, Band 2-B, from the Shift Supervisor and Operators, who are in the same pay band, Band 2-A. TR 300:5-8; compare CX 5 and 7 with PX 21. The Day Supervisors generally earn \$20-30,000 more than the Shift Supervisors, who earn approximately \$7500 more than a Level 2 Operator. TR 300:20-302:12; PX 15. All three groups receive an annual bonus in addition to their salary. TR 303:15-17. Bonuses for the Day Supervisors typically were \$3-4000 more than the Shift Supervisors, whose bonuses generally were a few thousand dollars more than the Level 2 Operators.⁶ PX 15. Shift Supervisors and Operators receive a ‘shift differential’ stipend that Day Supervisors do not receive because of the rotating shifts that the former two groups work, unlike the Day Supervisors. TR 390:10-25.

Eversource evaluates the Shift Supervisors and Operators twice a year. See e.g. PX 26 and CX 20 (midyear and year end evaluations for Curt Horning). The Day Supervisors evaluate and review both groups. TR 509:22-510:1; CX 20. The Shift Supervisors do **not** evaluate the Operators at any time, although they may occasionally conduct SIMS observations of the Operators or fellow Shift Supervisors. TR 527:23-24. These observations are used by Eversource to identify areas where more training might be helpful, not for discipline. TR 504:4-7

Field staff are organized by Eversource into geographic regions. TR 369:1-5; see PX 23. The linemen report to their own group of supervision, separate from ESCC management. TR 537:12-17. The work of the field staff and ESCC is coordinated to ensure the reliability of the system and delivery of power to the Employer’s customers. Field workers make requests to perform maintenance on the transmission lines to an Outage Coordinator weeks in advance of any planned outage. TR 346:14-21, 413:2-19, 422:11-16; PX 14. The Outage Coordinator

⁶ In one instance, Operator Brendan von Koss received the same or greater bonus than several of the Shift Supervisors, although still less than the Day Supervisors. PX 15.

reviews the request to ensure that there are no conflicts with other planned work that might impact the overall system. TR 346:22-347:4. The Outage Coordinator in turn forwards the request first to ISO New England to ensure no conflicts outside of New Hampshire and then to the ESCC after ISO New England has approved the request. TR 347:4-14, 411:3-4. The date and time for performing the planned maintenance is determined by the Outage Coordinator and field supervisor where the work is to be done. TR 371:13-20, 411:3-6, 412:4-8.

After receiving the work order, members of the team who will be on shift when the work is scheduled to be performed consult with one another to reach a consensus as to who will write a switching and tagging order to isolate and deenergize the line to allow the work to go forward safely. TR 420:6-23. The switching and tagging order may be written by any member of the team, including the Shift Supervisor, so long as the member has the necessary NERC certifications to do so. TR 420:20-23, 507:6-24. If a team member indicates that they are uncomfortable writing the order, then they do not do so. TR 420:15-20. Shift Supervisor Rossi does **not** assign or order any Operator to write the switching and tagging order, the team decides as a group who will write the order. TR 420:6-24.

Shift Supervisors and Operators perform essentially the same daily work as circumscribed by their certifications and experience. TR 344:6-346, 410:16-19, 411:12-17, 527:19-21, 528:5-12; CX 14. All personnel must strictly adhere not only to federal regulations governing the operation of the system, but also to extensive procedures promulgated by Eversource. The Employer has promulgated some 26 procedures called ESOP's common to its operations in New Hampshire, Massachusetts, and Connecticut. TR 335: 14-19; PX 13. In addition thereto, Eversource has issued over 35 other procedures denominated as SOP's peculiar to New Hampshire. TR 333:21-334:23; PX 12. When Shift Supervisors are in the bathroom or

the galley kitchen, Operators are fully capable and respond to emergencies on the System, which is denoted by an alarm.⁷ TR 436:4-24, 538:22-539:11.

The Operator or Shift Supervisor who writes the order does so using established procedures and sequences of opening and closing switches and relays to safely deenergize and, once work has been completed, to restore power to a line. TR 421:18-422:4. In writing the switching and tagging order, the Shift Supervisors and Operators must be mindful of how power will be restored to customers should something go wrong. TR 349:2-7. In the event of an unplanned outage on a line, Eversource has a goal of restoring power to as many customers as safely possible within five minutes. TR 536:13-14, 537:12-17. Upper management, including the Day Supervisors, must be notified about any outage affecting more than 2500 customers per PUC rules. TR 358:6-359:1, 362:12-15.⁸

Switching and tagging orders are reviewed by multiple personnel before the order is finalized. TR 349:17-20; PX 14. Each time an order is changed, the ‘reviewed by signatures’ are all discarded so that it can be assessed by the entire team once more. TR 383:19-384:2, 416:4-6. In some instances, the order may be reviewed and altered by as many as 15 different people, including Day Supervisors, multiple Shift Supervisors, and multiple Operators. See PX 14 and 18. Either a Shift Supervisor or qualified Operator must sign off on the final order by affixing his initials to the order. TR 351:2-5, 353:7-10, 354:1-24, 416:13-417:19, 506:3-25, 509:5-17; see PX 14 (approved by Shift Supervisor Rossi) and PX 18 (approved by Operator von Koss).

Offgoing personnel hold a Shift Turnover at the end of their shift with incoming personnel before the latter start their shift. TR 419:14-17, 517:5-9. Day Supervisors also

⁷ There are no audible alarms in either the bathroom or the galley kitchen. TR 549:4-8. Although there is a visible alarm display in the kitchen, the Shift Supervisor would have to be looking at it to be aware that there was an emergency. TR 549:9-12.

⁸ TR 358:8 mistakenly says “employees” rather than “customers.”

participate when available. TR 517:9-11. The turnover briefing is used to apprise the incoming shift of events that transpired on the prior shift and any issues. TR 419:17-420:5, 529:22-530:12. Each member of the incoming team is expected to participate in the conversation regarding the status of the System and all Operators and Shift Supervisors are responsible for gaining a clear understanding of the System. TR 372:2-5. The incoming Shift Supervisor and Operators all sign or initial the 'ESCC Shift Turnover Sheet' signifying that the briefing has occurred. TR 505:21-506:2.

When an Operator is out for unplanned illness, he typically calls the Day Supervisor to whom he reports and, as a courtesy, the Shift Supervisor on the team. TR 525:3-526:5. The Day Supervisor, not the Shift Supervisor, then decides whether the team will work short-handed or whether to call in another Operator. TR 403:22-404:3, 404:1-3, 410:3-11, 526:6-9. If another Operator is to be called in, the Day Supervisor decides which Operator to call and makes the notification. TR 526:15-18. The Day Supervisor follows the same procedure if a Shift Supervisor is unexpectedly absent. TR 408:9-14, 409:22-24. Sometimes one of the Operators on the team may be asked to fill in for the absent Shift Supervisor.⁹ TR 408:22-409:9, 526:23-527:6. The Shift Supervisor cannot excuse an absence or approve vacation time; only the Day Supervisor can do so. TR 405:2-5, 410:20-23, 526:10-14, 526:19-22. The Shift Supervisor also lacks authority to change the schedule of an Operator or to extend their normal working hours; again, this authority is vested in the Day Supervisor. TR 405:6-10, 541:14-20. Additionally, the Shift Supervisors do not have the authority to reassign Operators to other work locations; they can request additional manpower in the control room, but the decision to redirect Operators or to call in off-duty personnel in the event of an unexpected outage is made by the Day Supervisors and

⁹ von Koss testified that he did so for a single day sometime in late 2022. TR 526:23-527:6. John Duckless filled in for a longer period of time. TR 409:1-2.

above. TR 404:6-21. Similarly, the Shift Supervisor has no authority to move Operators who are working off-shift; only the Day Supervisor or management can do so. TR 404:22-405:1.¹⁰

About one hour after the shift starts, the Shift Supervisor and Operators participate in a daily call with the Day Supervisors as well as the Outage Coordinators and SOC Supervision. TR 531:15-20. Participants on the call discuss the day's planned work and any potential conflicts on the system based on the real time conditions such as incoming severe weather or unexpected line outages. TR 531:20-532:1.

Sometimes, despite the extensive amount of planned maintenance and preventive maintenance such as tree trimming, the unexpected can occur. Many things can disrupt power such as an animal contacting conductive equipment or a vehicle crashing into a pole. TR 57:11-16, 443:2-5 In such instances where the system trips lines/equipment open in response to faulted conditions, the on shift team is the first to respond to the event. The Shift Supervisor and Operators as a team come up with a plan, based on indications on their work desk, to isolate the faulted part of the system and to restore power to as many parts of the line as possible. TR 422:25-423:16, 532:5-9. Once the plan is finalized, either an Operator or Shift Supervisor will ask the SOC to dispatch linemen to the scene to evaluate initial damage. TR 424:1-8. During these outage events, procedures dictate when Day Supervision and other management are notified, this is done via the mentioned Shift Supervisor cell phone. The Day Supervisors often provide input such as ordering a minimum number of crews to respond to an outage based on initial customer numbers. The dispatching of line crews is done via an automated list-based callout system. TR 431:9-13.

¹⁰ Off shift personnel are Shift Supervisors and Operators who are working but on 8-hour rather than 12-hour shifts and are not monitoring the system. Off duty personnel are not at work and on their off day. TR 306:20-22; 377:18-25.

Once the linemen are on site, they can request additional field support via the SOC. TR 424:8-12, 536:23-537:1. If the damage necessitates staff other than linemen, such as a field electrician or a communications and controls technician, then an Operator or Shift Supervisor contacts the appropriate Field Supervisor and Day Supervisor to have them send one of their workers to the scene. TR 537:1-11. The ESCC does not request a particular worker from the Field Supervisor, this decision rests with the Field Supervisor. TR 427:16-428:1, 540:12-19. If the unexpected outage occurs off hours such as during the night or on a weekend, a dedicated 'On call Field Supervisor' decides whether the repair can wait and if not dispatches the appropriate crews from an on-call list; the Shift Supervisor or Operator does not decide. TR 431:3-433:21, 500:11-502:4.

It is up to the Field Supervision/Management, not Shift Supervisor, to decide whether a crew out in the field is kept on the job while making repairs for a long duration, or if they have a relief sent to take over the job; the Shift Supervisor lacks authority to assign overtime. ESCC staff will dictate that repairs need to be made to the system, but the Shift Supervisor does not have authority to assign particular linemen to respond to an outage; that is the prerogative of the Field Supervisor, though in general geographic location of the outage dictates who is assigned to respond. TR. 427:16-430:2, 432:22-23; PX 23. Based on the amount of customers out of power for a particular outage, the Shift Supervisor can be ordered by a Day Supervisor or above to send a larger than normal initial amount of crews to respond to the faulted location. TR 502:5-14.

Fortunately, there never has been a blackout of the grid in New England. TR 385:10-11, 545:1. However, Shift Supervisors and Operators must prepare for that eventuality. Rossi and von Koss both testified that Shift Supervisors and Operators receive **the exact same training** to respond to this blackout event. TR 400:3-7, 543:13-544:22. Training typically consists of a

dedicated week each year during which team members review procedures and have simulations where Shift Supervisors and Operators serve as the Restoration Coordinator.¹¹ TR 543:13-544:17. Operators, like Shift Supervisors, would be able to serve as Restoration Coordinator if needed. TR 545:1-8. Operators, like Shift Supervisors, have the authority per NERC standards to take whatever steps are necessary, including shedding load, without obtaining approval from anyone else to keep the system operational. TR 367:14-24; CX 8, p. 5, 15.

ARGUMENT

I. THE SHIFT SUPERVISORS ARE NOT SUPERVISORS WITHIN THE MEANING OF SECTION 2(11) OF THE ACT.

Because the six Shift Supervisors do not assign or responsibly direct work of the Operators, and because they clearly do not use independent judgment to the extent that they arguably assign or direct other employees, the Employer has failed to carry its burden of proof that the Shift Supervisors are supervisors within the meaning of Section 2(11) of the National Labor Relations Act.¹² *Oakwood Healthcare*, 348 NLRB 686, 687 (2006); *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-12 (2001). In *Kentucky River*, 532 U.S. at 713, the Supreme Court explained that individuals are statutory supervisors if “(1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their exercise of such authority is not merely routine or clerical in nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer.” Subsequently, in *Oakwood Healthcare*,

¹¹ Although Dickie and Cloutier claimed that the Shift Supervisors received additional training and that only Shift Supervisors modeled serving as the restoration coordinator, their testimony should not be credited. Team members are scheduled for training at the same time, Rossi testified that he did not receive any additional training, and von Koss testified that he has acted as the Restoration Coordinator during the simulation training. Dickie agreed that if the Operators did receive full training, they would be able to serve as Restoration Coordinator TR 387:14-16.

¹² At hearing, the Employer represented that it did not contend that the Shift Supervisors performed any of the other functions enumerated by Section 2(11). TR 12:8-14.

348 NLRB at 692, the Board defined “independent judgment” to require that “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data” involving a degree of discretion that is not ‘routine or clerical.’” In the instant case, the Employer adduced only conclusory statements from managers Brian Dickie and David Cloutier, neither of whom had ever worked as a Shift Supervisor or Operator at Eversource, regarding the assignment and direction of work. Shift Supervisor Aaron Rossi and Operator Brendan von Koss persuasively contradicted Dickie and Cloutier’s testimony and detailed how work actually is assigned and directed by the dispatch teams in adherence to the plethora of federal regulation and policies promulgated by Eversource. Accordingly, the Region should find that the Shift Supervisors should be included in the unit sought by the Petitioner.

A. The Shift Supervisors Do Not Assign Work Nor Do They Use Independent Judgment To Do So To The Limited Extent That They Arguably Assign Work.

Because the Shift Supervisors do not assign work to a place, to a time, or give employee significant duties, and do not exercise any degree of discretion to the extent that they might do so, the six Shift Supervisors do not meet the test set forth by the Supreme Court in *Kentucky River* as explicated by the Board in *Oakwood Healthcare* to qualify as supervisors under Section 2(11). “In *Oakwood Healthcare*, the Board clarified that the authority to assign under Section 2(11) means designating an employee to a place, such as a location, department, or wing; appointing an employee to a time, such as a shift or overtime period; or giving an employee significant overall duties.” *NSTAR Electric & Gas Co., Inc.*, Case 01-RC-112623, slip op. at 13 (Jan. 3, 2014), *enfd.*, 798 F. 3d 1 (1st Cir. 2015). The record evidence demonstrates that the Shift Supervisors perform none of these functions.

1. Shift Supervisors do not Assign Employees to a Place.

The six Shift Supervisors and eighteen Operators are organized in six teams and all report to the ESCC, the central control center in Manchester, New Hampshire. Once there, they sit together in the control room at desks in front of monitors with the Operators taking the front desks and the Shift Supervisor in back.

Working from the central control center, the Shift Supervisors neither assign field employees or Operators to a place, as Eversource contends. The field employees are organized geographically, and in the event of an outage, the field supervisor, not the Shift Supervisor, typically would assign the closest linemen in the field to respond. Rossi testified that he had no ability to tell a field supervisor, let alone a lineman, that he wanted a particular lineman to attend to the outage because of the lineman's skill set and level of proficiency. Compare *Oakwood Healthcare*, 348 NLRB at 647, cited with approval by *NSTAR*, 798 F.3d at 12 n.12.

But even if one were to credit Eversource's claim that the Shift Supervisors can assign the field employees where to go in the event of an outage, as this Region's decision in *NSTAR* and the Board's decision in *Entergy Mississippi*, 357 NLRB 2150 (2011), establish, because doing so is based on geographic proximity to the outage, this would only constitute the exercise of routine, not independent, judgment. *NSTAR*, 798 F.3d at 14 (choice of workers is pretty "automatic" based on geography); *Entergy*, 357 NLRB at 2151. In addition thereto, when multiple outages occur, Eversource has policies prioritizing the restoration of power first to the Seabrook nuclear power facility if impacted and then to the maximum number of customers affected by the outage. While the Shift Supervisors may decide based on these factors which outage should be addressed first, as the Region concluded in *NSTAR*, slip op. at 15-16, "routing of field employees to an outage location is nothing more than a routine task." Rather, geographic

concerns and established call-out procedures dictate which field employees respond to such outages. See also *Atlantic City Elec. Co. v. NLRB*, 5 F.4th 298, 309 (3d Cir. 2021), finding that *Entergy Mississippi*, 367 NLRB No. 109 (2019) (“*Entergy III*”) “should not be read to hold that ‘prioritization of outages by itself establishes the dispatchers’ supervisory authority,’ since the ‘allocation of resources and prioritization of outages are not supervisory indicia set forth in Sec[ti]on 2(11).’”

The only evidence that Eversource offered in support of its contention that the Shift Supervisors could assign Operators to a place was a single instance in which Shift Supervisor Richard Murphy asked Operator Marshall Diamond to report to the central control room in Energy Park in Manchester rather than his usual location at 1580. TR 595. Although Dickie testified that his “understanding” was that the Day Supervisor was only notified after the fact (TR. 595), von Koss actually was physically present in the control room and testified that he heard Murphy first obtain permission from Day Supervisor Andrew Grady on Monday. TR. 602-03. Thereafter, Marc Dionne, not Murphy, directed that Diamond do so for the balance of the week. TR 605

Eversource also suggested that the Shift Supervisors could assign Operators to abandon the control center in favor of 1250 in Hookset, New Hampshire in the event of an emergency, such as a blackout. In fact, a blackout has never occurred. Moreover, were one to occur, any such assignment would be pursuant to operating procedures already adopted by Eversource and would not involve the exercise of independent judgment. TR 521:12-522:11. See *Atlantic City Elec. Co. v. NLRB*, 5 F.4th 298, 311 (3d Cir. 2021), “in cases where ‘the record [does]not reveal *any instances*’ of the exercise of supervisory authority, that authority could be ‘merely ‘a speculative possibility, which absent demonstration, is simply ‘paper power.’”” Citing *NLRB v. Attleboro*

Associates, Ltd., 176 F.3d 154, 165 (3d Cir. 1999) and *Beverly Enterprises-Mass., Inc. v. NLRB*, 165 F.3d 960, 964 (D.C. Cir. 1999).

Moreover, because the assignment of Murphy and any assignment to go to Hookset would not be permanent but only limited and temporary, such assignments do not and would not rise to the level necessary to comprise the exercise of Section 2(11) supervisory authority. See *NSTAR*, Case 1-RC-11263, slip op. at 14, noting any “such assignments are not permanent in nature.”

2. Shift Supervisors do not Assign Employees to a Time.

The six Shift Supervisors and eighteen Operators work a rotating 12-hour shift from 6AM to 6PM or 6PM to 6AM or from 7AM-3PM that repeats after 6 weeks. The Shift Supervisor has no authority to change this schedule or to tell someone to report to work early. TR 370:20-24, 405:16-21.

Although Dickie, who is four levels removed from the control room, claimed that the Shift Supervisors could call in off duty or off shift employees, upon cross-examination he relented and testified, “I believe that’s the case, they can. Now I don’t know of any rule that states they have to call the day Shift Supervisor and maybe I’m not the one to answer that question.” TR 307:2-308:9. Still later, he admitted, “there probably would be a conversation between the two [the shift and Day Supervisor] right, because they work, you know as a team as a partner.” TR 309:17-18. And ultimately he conceded, “if you had a rotational Shift Supervisor that was on shift and they were looking for an off shift Operator to do something, they would probably have to go through the day Shift Supervisor to do that.” TR 311:3-6. The same would be true for calling in off duty Operators. TR 312:4-12. Both Rossi and von Koss categorically refuted this testimony, declaring that before they could call in off-duty field personnel to respond

to an outage, they would have to obtain the approval of the Day Supervisor. And, if approval were obtained, they would then call in employees using an established call-in list.

Nor can the Shift Supervisor assign overtime. In the event of an outage or the failure to complete planned maintenance, the field supervisor, not the Shift Supervisor, would decide whether to retain linemen to work overtime. The Shift Supervisor has no authority to tell any field worker to work overtime. Any overtime worked in the event of unplanned emergencies, such as a storm, would first have to be approved by the Day Supervisor. TR 531:15-20. *Atlantic City Elec. Co. v. NLRB*, 5 F.4th 298, 312 (3d Cir. 2021) (where there was no evidence that system Operators could instruct crews to work overtime or send a replacement crew, and could only request that employees work overtime, operators were not supervisors).

In *NSTAR*, Case 1-RC-11263, the transmission systems supervisors (TSS's) performed much of the same work as the Shift Supervisors here; in fact, the TSS's appear to have had somewhat greater autonomy in calling in and dispatching employees during normal and business hours. *Id.*, slip op. at 14. Nevertheless, the Region concluded that they did not appoint employees to a time. Citing *Entergy Mississippi* and *Golden Crest Healthcare Center*, 348 NLRB 887 (1997), *enf'd in relevant part*, 156 F3d 405 (2d Cir. 1998), the Region declared, "[I]t is well-established 'that the party asking to establish supervisory authority must show that the putative supervisor has the ability to require that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to request that a certain action be taken.'" *NSTAR*, slip op. at 15, *enf'd*, 798 F.3d at 15-16. Here, since the Shift Supervisors do not assign start or end times; because the field supervisors determine whether to work overtime on scheduled maintenance; and because the Shift Supervisors must seek approval from the Day

Supervisor before overtime is worked on unplanned outages, the Shift Supervisors do not assign to a time.

3. Shift Supervisors do not Assign Significant Duties to Employees.

Because the Shift Supervisors in consultation with their teams only direct Operators to perform specific tasks, not a broad category of responsibilities, and because the field supervisors, not the Shift Supervisors, then determine who will carry out the switching orders, the Shift Supervisors do not assign significant duties to employees. In *NSTAR*, the Region and the First Circuit considered and rejected the same arguments related to switching orders which Eversource evidently regurgitates here. The Region found, and the First Circuit concurred, that the field supervisors, not the TSS's, determine which field employees execute the switching orders in planned outages and that in unplanned outages, any direction from the TSS's to the field employees was "best viewed as a series of discrete tasks that the TSS's relay to the field employees to be performed in a sequential order." *NSTAR*, slip op. at 15, *enfd*, 798 F.3d at 16-17. Accord: *Entergy Mississippi*, 357 NLRB at 11. The same is equally true here.

Eversource's additional argument, that the Shift Supervisors assign significant overall duties because they determine which Operator writes the planned switching orders, should also be rejected because it also is a direction, not the assignment of a broad category of responsibilities. The Operator's overall job is to write switching orders. Directing a particular Operator to write a particular switching order is akin to telling a nurse to give a sedative to a particular patient rather than telling a nurse that she will regularly administer medications to a person or group. *NSTAR*, 781 F.3d at 16, citing *Oakwood Healthcare*, 348 NLRB at 689. Moreover, as van Koss and Rossi testified, the decision as to who will write a particular switching order is done by team consensus, taking into account required NERC certifications,

and Operators who think they lack the skills to write the order can so indicate and will be excused. Under these circumstances, the Shift Supervisor is not exercising independent judgment in deciding which Operator will write the switching orders.

B. The Shift Supervisors Do Not Responsibly Direct Work Nor Do They Use Independent Judgment To Do So To The Limited Extent That They Arguably Direct Work.

Because the Shift Supervisors do not oversee the Operators' work and are not accountable for their performance, they do not responsibly direct work. In *NSTAR*, slip op. at 16, the Region stated:

To establish accountability, it must be shown that the putative supervisor is empowered to take corrective action, and is at risk of adverse consequences for others' deficiencies. *Oakwood Healthcare*, supra at 691- 692. As with all of the supervisory indicia enumerated in 2(11), responsible direction must entail independent judgment. Thus, the responsible direction must be (a) independent, free of the control of others; (b) involve a judgment, that is, require forming an opinion or evaluation by discerning and comparing data, and (c) involve a degree of discretion that rises above the routine or clerical. *Oakwood Healthcare*, supra at 692-693.

Here, the record is devoid of evidence that the Shift Supervisors responsibly direct the field employees regarding the switching orders. Rather, as in *NSTAR*, slip op. at 17, "At most, any interaction of TSSs with field employees during switching operations amounts to little more than an exchange of information or guidance." Hence, applying that decision, which cites to *Oakwood Healthcare* and *Golden Crest*, there is no evidence that the Shift Supervisors responsibly direct the field employees. Similarly, there is no evidence, and Eversource did not contend, that the Shift Supervisors are held accountable for the actions of the field employees.

Eversource's reliance upon a single instance in which Shift Supervisor Curt Horning was disciplined and thus purportedly held accountable for the actions of an Operator is misplaced. In fact, both the documentary evidence and the record testimony demonstrate that while Horning was indeed disciplined, he was disciplined for his **own** mistakes, not for the mistakes of the

Operator. PX 11 states, “Your failure to ensure that work practices were adhered to could have resulted in serious personal injury...As a result of **your** actions, you are receiving this written warning.” Emphasis added. PX 26 clearly states, “You [Horning] failed to call an all stop when your crew took over the job mid-stream, during an event you admitted considered an abnormal situation.” Upon cross examination, Dickie conceded that Horning was disciplined for his own error:

Q. And part of what happened here is that the Shift Supervisor allowed the clearance to be issued without performing his part of the function, correct:

A. Yeah, he didn’t supervise properly the person doing the work.

Q. Okay. And as a result of his failure to do his part of the clearance, that’s—he was given a written warning where it says the sentence that I read earlier, as a result of your actions, you are receiving this written warning.

A. Right.

TR 340:7-16. See also TR. 594. Moreover, Horning blamed others for the mistake and “did not take ownership” for his own part in the switching error. PX 26. Thus, the record is devoid of evidence of any Shift Supervisor being held accountable for the actions of an Operator where the supervisor himself did not err. Compare *NSTAR*, slip op. at 17, *enfd*, 798 F.3d at 1, stating, “the error attributed to the TSS was for his failure to fully communicate the sequential process of the switching order to the field employee, which is an error in his job performance, not the field employee’s job performance. This shows that the TSS’s are accountable for their own performance or lack thereof, not that of the field employees”). See also *Atlantic City Electric*, 5 F.4th at 312 (“The putative supervisor must be at risk of suffering adverse consequences for the actual performance of others, not his own performance in overseeing others.”). And see *Northeast Utilities Service v. NLRB*, 35 F.3d 621 (1994)(coordinators who worked in control room for utility overseeing New England power grid found not to be supervisors because they

were not accountable for conduct of satellite Operators). Moreover, the Operator who made the mistake does not even report to Horning but rather to the Day Supervisor. TR 588-89; PX 2.

In fact, the record evidence shows that when Operators have made mistakes, Shift Supervisors have not been held accountable. For example, von Koss testified, and Dickie confirmed, that when Operator Marshall Diamond made a mistake which resulted in the loss of power to a large number of customers, the Shift Supervisor was not punished or held accountable. TR 538:2-21, 570-71. In another instance, where Operator Brendan von Koss mistakenly selected the wrong device while switching out a line, Shift Supervisor Matthew Urie was not held accountable. TR 397:15-398:20, 533:17-535:6.

Hence, there is no evidence that the Shift Supervisors responsibly direct either the field linemen or the Operators. In the sole instance cited by Eversource to demonstrate that the Shift Supervisors are held accountable for the actions of the Operators, in fact the Shift Supervisor himself erred. The failure to perform one's own responsibilities does not constitute responsible direction within the meaning of Section 2(11) of the Act.

C. The Secondary Indicia Are Inconsistent And Do Not Suffice To Support A Finding That The Shift Supervisors Are Statutory Supervisors.

Aaron Rossi's statements in his 2021 annual review (CX 19) are secondary indicia of supervisory status that should be given no weight. As the Region recognized in *NSTAR*, slip op. at 19, "It is well established that where, as here, putative supervisors are not shown to possess any of the primary supervisory indicia, secondary indicia are insufficient to establish supervisory status. *Golden Crest Healthcare, supra* at 730 n. 10; *Ken-Crest Services*, 335 NLRB 777, 770 (2001). In his 2021 review, Rossi did state that he was "proactive by ensuring adequate crews and equipment are assigned to outages" However, as Rossi clarified on cross-examination, he does not assign crews but rather "I call the SOC for a crew to respond to that outage" and that the Day Supervisor is in charge of his team. TR. 493-95. While Rossi also

states in his review that “I manage my team by knowing there [sic] strengths and weaknesses and assigning work throughout the room accordingly,” decisions as to which Operator will perform a particular task are made based upon NERC requirements and only after first consulting with his team and reaching a consensus. Moreover, they are the assignment of a task, not a broad range of responsibilities. Hence, Rossi’s statements in his evaluation not only do not support that he is a statutory supervisor but are at best secondary indicia which are insufficient to support a finding of supervisory status.

Indeed, other secondary indicia point in the direction that the Shift Supervisors are not statutory supervisors. Thus, for example, there is a substantial pay difference between the Shift Supervisors and the Day Supervisors. By contrast, the Shift Supervisors earn only slightly more than the Operators. Both the Shift Supervisors and the Operators work the same rotating shift and sit in a common area unlike the Day Supervisors, who work only days, have offices when working at the ESCC, and at times work from home. Hence, to the extent that the Region considers secondary indicia, they are at best inconclusive and arguably further support Petitioner’s position that the Shift Supervisors are not statutory supervisors.

CONCLUSION

Eversource has failed to carry its burden of proof to show that the six Shift Supervisors are supervisors within the meaning of Section 2(11) of the Act. The Shift Supervisors do not assign Operators or field employees to a time or place and merely assign the Operators and field employees tasks, not a broad category of work; therefore, they do not meet the test established by Oakwood Healthcare necessary to find that they assign work within the meaning of Section 2(11). Nor do the Shift Supervisors responsibly direct work; they are responsible for their own mistakes and are not accountable for those working with them. Accordingly, the Region should find that the six Shift Supervisors are not statutory supervisors and they should be permitted to vote in the election.

Respectfully submitted,

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**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION ONE**

In the matter of:

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY

Employer,

Case No. 01-RC-314865

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL NO. 1837,
AFL-CIO,

Petitioner.

EMPLOYER'S POST-HEARING BRIEF

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INTRODUCTORY STATEMENT

The evidence derived during four days of hearing establishes that individuals who work as Operations Shift Supervisors, also known as Rotational Shift Supervisors (“RSSs”), within the transmission control room (“Control Room”), also known as Electric System Control Center (“ESCC”), of Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Company”) are supervisors within the meaning of the National Labor Relations Act (the “Act”) and, therefore, not subject to the Act.

The Supreme Court has ruled that an employer is entitled to undivided loyalty from employees who hold jobs like the RSS – jobs that are closely aligned with management and function as part of the management hierarchy, are imbued with potent authority and substantial amounts of discretion, and who independently oversee and direct other employees in the interest of the employer. *See NLRB v. Yeshiva University*, 444 U.S. 672, 681-682 (1980); *NLRB v. Bell Aerospace Co., Div. of Textron, Inc.*, 416 U.S. 267, 279-282 (1974). The RSS position has always functioned as a representative of management. Allowing them to unionize would, therefore, deprive the Company of the loyal representation to which it is entitled from positions such as these.

When Congress exempted supervisors from the coverage of the Act via the Taft-Hartley Act of 1947, both houses of Congress expressed similar concern about an overbroad reading of the statutory term “employee” that would include those clearly within the managerial hierarchy. *NLRB v. Bell Aerospace Co.*, 416 U.S. at 281-282. The Supreme Court has endorsed this element of Congressional concern, as expressed in a passage from the House Report in 1947 that continues to capture the reasons that the RSS positions should be excluded from the coverage of the Act:

Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending on the pressure of collective action. No one forced them to become supervisors. They abandoned the “collective security” of the rank-and-file

voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such “security.” It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead to the leveling processes of seniority, uniformity and standardization that the Supreme Court recognizes as being fundamental principles of unionism. . . . It is wrong for the [supervisors], for it discourages the things in them that made them [supervisors] in the first place. For the same reason, it discourages those best qualified to get ahead, it is wrong for industry, and particularly for the future strength and productivity of our country.

NLRB v. Bell Aerospace Co., 416 U.S. at 281, n.11 (internal citation omitted) (quoting H.R. Rep. No. 245, 80th Cong., 1st Sess., 117 (1947)).

The RSSs are responsible for the real-time operation of the electrical transmission system. The RSSs apply independent judgment to responsibly direct the work of the Level 1 and Level 2 Operators and assign work to Level 1 and Level 2 Operators, as well as field employees, to ensure the safe and reliable operation of PSNH’s electric grid. They independently, and without any supervisory review, direct personnel to address myriad potential contingencies that may arise while on shift in conformance with federal, state, and Company guidelines and regulations.

Importantly, the RSSs are held accountable for the work of the Operators that they oversee. They are involved in the training and development of Operators and help coach them to succeed in their respective roles. Additionally, a Level 1 Operator cannot progress to Level 2 absent the recommendation of his supervising RSS.

PSNH management created the RSS position to meet the demands of its rapidly expanding business and to add a level of necessary on-shift oversight to its Control Room operations. Management expects the RSSs to operate as leaders, and the RSSs expect no less of themselves. As such, the position has always been viewed as supervisory – both by management and the RSSs. As representatives of PSNH they must be (and are) undividedly loyal to PSNH when making their decisions that impact PSNH’s employees, business plans, and customers.

The RSSs are therefore, undoubtedly, statutory supervisors within the meaning of 29 U.S.C. § 152(11). Accordingly, under the supervisory test, the Petition should be dismissed.

PROCEDURAL BACKGROUND

Public Service Company of New Hampshire d/b/a Eversource Energy (“PSNH” or “Company” or “Employer”) is a New Hampshire public utility¹ engaged in the transmission and distribution of electricity. PSNH maintains an office and place of business located at Energy Park, 780 N Commercial Street, Manchester, New Hampshire 03101. Tr. 48²; Board Ex. 4.

PSNH is engaged in interstate commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act (the “Act”) and is subject to the jurisdiction of the Act. Board Ex. 2. The International Brotherhood of Electrical Workers, Local No. 1837, AFL-CIO (“IBEW Local 1837” or “Union”) is a labor organization within the meaning of Section 2(5) of the Act. *Id.*

On March 27, 2023, the Union filed a Petition for Representation with Region One of the National Labor Relations Board. The proposed unit was described as “All ESCC System Operators including Control Room Operator, Systems Operator, Shift Operation Supervisor, Shift Operation Supervisor Level 1 & Shift Operation Supervisor Level 2.”

A hearing was held on April 18, 2023, April 19, 2023, April 26, 2023, and April 28, 2023, over Zoom. PSNH was represented by Angela Ruggiero and Divya Vasudevan, Eversource Energy, 107 Selden Street, Berlin, CT 06037. The Union was represented by Jeffery Neil Young,

¹ PSNH was previously a wholly owned subsidiary of Northeast Utilities, a Connecticut-based holding company which owned utility companies in Connecticut, Massachusetts, and New Hampshire. Northeast Utilities merged with NSTAR Electric and Gas Company in 2008 and, in or around 2013, the various operating companies rebranded as Eversource Energy while retaining their individual and former corporate identities. Tr. 30.

² Citations to the transcript shall be identified as “Tr. ___” followed by a page number. Volume I of the transcript (pages 1-199) contains testimony from April 18, 2023; Volume II of the transcript (pages 200-286) contains testimony from April 19, 2023; Volume III of the transcript (pages 287-468) contains testimony from April 26, 2023; and Volume IV of the transcript (pages 470-618) contains testimony from April 28, 2023. Citations to National Labor Relations Board Exhibits shall be “Board Ex. ___.” Citations to the Employer’s (Company’s) Exhibits shall be “CX ___.” Citations to the Union’s (Petitioner’s) Exhibits shall be “PX ___.”

Solidarity Law, 9 Longmeadow Road, Cumberland Foreside, ME 04110. The parties requested the right to file post-hearing briefs, which were due on or before May 26, 2023.

FACTUAL BACKGROUND

I. General Overview of PSNH's Business

PSNH is a public utility that receives and distributes electricity to individual customers in selected areas within New Hampshire. *See* CX 1. PSNH does not generate its own electricity; rather, PSNH purchases electricity from generating entities (other companies), and the electricity is then delivered through the transmission system, which is primarily comprised of overhead transmission lines. Tr. 34; 42. The transmission system carries electricity of 345 kV, 230 kV and 115 kV. Tr. 34. Electricity travels over the transmission lines into substations, which serve as the interface between the transmission and distribution system. Tr. 44. Substations³ step down the voltage of the electricity to below 69 kV, a more usable level for the distribution system, which delivers electricity to customers. Tr. 35.

The ESCC is the Control Room for the transmission system. Tr. 22. The System Operations Control Center ("SOC") is the control room for the distribution system. Tr. 22. The ESCC and SOC have separate personnel and a separate supervisory structure, both from one another, and from the Line Department (discussed below).

Lineworkers report to Area Work Centers, which are divided into five regions across New Hampshire. Tr. 48. The Company's lineworkers (including its troubleshooters) are presently represented by IBEW Local 1837, along with some engineering field technicians (line designers), some field electricians and personnel within substation operations, and certain administrators. Tr.

³ There are approximately 185 substations across New Hampshire. Tr. 42.

50. Each operations department within PSNH (with the exception of the Troubleshooters) have working foremen, who are not unionized. Tr. 51.

At the time of the filing of the Petition, the ESCC, was staffed by three (3) Day Shift Supervisors⁴ (“DSS”); six (6) Rotating Shift Supervisors⁵ (“RSS”); (9) Level One Operators; and nine (9) Level Two Operators, all of whom “report up” to Manager Marc Dionne. Tr. 79. Mr. Dionne reports to David Cloutier, Director of System Operations, and Mr. Cloutier reports to Brian Dickie, Vice President of System Operations, New Hampshire. Tr. 73; CX 2.

II. The Electrical Grid and Regulatory Oversight

The Eastern Interconnect is the system of electrical transmission cables, lines, and related equipment that extends eastward as a gigantic “grid” from the Rocky Mountains to the Texas border (with the exception of Quebec) and covers the entire eastern portion of the United States, including New Hampshire and the territory served by PSNH. CX 1, p. 3; Tr. 36. The Eastern Interconnect feeds PSNH with the electricity that PSNH, in turn, provides to its customers. Tr. 36. Because all regions of the grid are magnetically coupled, if an electrical line fails or breaks (known as a “trip”), that disruption can cascade (or impact other lines) throughout the grid. Tr. 36.

The electrical transmission⁶ system is overseen by the Federal Energy Regulatory Commission (“FERC”). Tr. 35. Following a large blackout around the Great Lakes in 2003, FERC granted additional responsibility for the oversight of the transmission grid to the North American Electric Reliability Corporation (“NERC”), a not-for-profit entity whose mission is to ensure the reliability of the electrical grid system in North America. Tr. 35, 37. NERC, in turn, administers

⁴ These individuals are also referred to as Supervisor, Electric System Control Center Operations and include Ronald K. Messier, Adrian Zanetti, and Andrew Grady. CX 2.

⁵ These individuals are also referred to as Operations Shift Supervisor and include Aaron P. Rossi, Curt E. Horning, Kenneth C. McHugh, Mark J. Bouchard, Matthew W. Urie, and Richard S. Murphy. CX 2.

⁶ The transmission network of lines is analogous to our system of interstate highways in that it facilitates the flow of electricity within the grid coast to coast and across state lines. Tr. 37. Distribution lines, by contrast, are more analogous to “dead end roads.” *Id.*

regional standards and has split up the country into subregions for the purposes of coordinating electric reliability. Tr. 35.

The Northeast Power Coordinating Council (“NPCC”) is the reliability coordinator for New England (and into Montreal and Ontario and up to Quebec). *Id.* The NPCC is comprised of various balancing authorities that are responsible for load forecasting, dispatching generation, and “day ahead markets.” Tr. 38-39. The Independent System Operator – New England (“ISO-NE”) is the reliability coordinator and balancing authority for New England. Tr. 34; Tr. 143. Each state controls the distribution authority; and as such, all maintenance and construction of distribution lines are conducted under state laws and guidelines. Tr. 35.

New England has six (6) “load⁷ control centers,” or “LCCs” tasked with monitoring load flows in the region. PSNH’s ESCC is one such LCC. Tr. 40. PSNH is subject to NERC standards, which were created to prevent blackouts. Tr. 37. In accordance with these standards, PSNH’s control centers are constantly running contingency analyses to predict and address service disruptions within its territory. Tr. 54.

All individuals who work within the ESCC are NERC-certified operators, which means they are trained in the NERC reliability fundamentals associated with the NERC standards. All SOC and ESCC Operators are trained in aspects of system switching⁸, tagging⁹, clearances¹⁰, Non-

⁷ “Load” is measured in watts, and is a term used to describe “how much power is being consumed in real time by all the individuals or all the customers that are connected to the system.” Tr. 51. Generation and load must always match. Tr. 52. When load and generation do not match, outages and blackouts result. Tr. 53. Outages are discrete events that impact a component of the electrical system. Tr. 53. Blackouts are cascading, multiday events in which generating plants trip off one by one and the system cannot maintain reliability or stability. Tr. 52-3.

⁸ The term “switching” refers to the act of isolating a piece of equipment in order to electrically isolate it so a person can work. Tr. 57. An example of switching would be the act of opening up a breaker. Tr. 64.

⁹ The term “tagging” refers to the act of tagging the boundary devices that has whatever particular tag is required for that work. Tr. 59.

¹⁰ The term “clearance” refers to a natural outage on the line or device where it is deenergized. Tr. 58.

Reclose Assurances (“NRAs”)¹¹, and permissions.¹² Tr. 63. The SOC can operate equipment only on distribution voltage assets and the ESCC can operate all equipment regardless of voltage class. Additionally, all who work within the control centers have access to System Control and Data Acquisition (“SCADA”), which allows operators to remotely control the system and acquire data, which is remitted back to the Control Room from all equipment in the field. Tr. 60.

Everything that happens within PSNH’s electric operations system is under the authority the SOC and ESCC. Tr. 65. The SOC is responsible for monitoring and maintaining *distribution* operations, and as such, SOC operators have control capability for distribution assets via SCADA. Tr. 61. The ESCC operates *transmission* and 34 kV distribution, and as such, ESCC operators have control access to both distribution and transmission assets via SCADA. Tr. 63. Due to the fact that the ESCC has full operational ability across the entire system, ESCC operators can access both transmission and distribution SCADA. Tr. 63. This means that sometimes the ESCC has control over the SOC, but not vice versa. Tr. 64.

III. The Rotating Shift Supervisor Position

A. History of the RSS Position

The RSS position was created in 2018¹³ in response to the needs of a growing department. Tr. 26. Mr. Dickie described that the positions were created when he was a director, in the position currently held by Mr. Cloutier. Tr. 87. In 2015, there were only twelve (12) people in the system operations department: one outage coordinator, one supervisor, and ten (10) operators. Between

¹¹ The term “Non-Reclose Assurance” refers to shutting off a “reclosing line;” that is, a line that goes on again and off again, so that crews can conduct work with the “assurance” that the line will not reclose on them. Tr. 58.

¹² The term “permission” refers to a deenergized line which simply needs a device opened within SCADA to be deenergized. Tr. 58.

¹³ The department started filling the RSS positions in early 2019.

2015 and the present, the work has almost doubled.¹⁴ Tr. 90. In response, today, there are twenty-eight (28) individuals working in the department, including the RSSs. Tr. 87.

The RSSs were created to provide supervision on shift. Tr. 87. The oversight provided by the DSSs was insufficient, as they are not always on shift with the Operators¹⁵ and constantly get pulled in many different directions and are tasked with handling administrative matters. Tr. 91. In testimony, Mr. Dickie explained that “[t]he complexity of doing all the work really required a supervisor on shift to not only manage the workload, but **manage the people on the shift.**” Tr. 88.¹⁶ (emphasis added).

More specifically, Mr. Dickie explained, “[W]e felt that there was a need for on-shift supervision to supervise the operators on shift and provide guidance and discretion in decision-making on which operator should be doing what. . . . So they were created specifically for that due to the growth of the department and handing out individual work, and providing guidance on, on shift.” Tr. 26. When asked why he did not simply hire more DSSs to add supervision and oversight, Mr. Dickie responded, “[T]he day shift supervisor isn’t on shift with the operators We wanted a rotational shift supervisor to be responsible for the shift. We wanted a managerial type person on that shift to provide training to the operators coming in; to, to give their work out, and you need some discretion to do that You couldn’t just give every operator this complex . . . job without putting some thought into whether or not they could do that type of work.” Tr. 90.

¹⁴ In 2015, there were 6,000 applications for planned work. The current total estimate of applications for planned work is 12,000. Tr. 89.

¹⁵ DSSs do not work the same shifts as RSSs; specifically, they are not “on shift” with Operators during overnight and weekend shifts. Rather, there are generally two DSSs in the ESCC, who each work five, eight-hour shifts during the week. DSS start times are “sometimes . . . staggered by an hour or so,” such that there are nine hours per day where a DSS is present in the ESCC. Tr. 407-408.

¹⁶ Mr. Dickie also explained that the growth experienced in the business handled by the SOC prompted him to create the lead position within that department as well. Tr. 88-89. Throughout his testimony, he maintained that the RSSs in the ESCC are the equivalent of the “leads” in the SOC. Tr. 78; 120; 264.

He described previous instances where the Company's response to real-time events fell short because no one individual was empowered to coordinate the work appropriately:

[W]e found that not having a supervisory person on shift, the operators weren't necessarily divvying up the way they should. And there was no one orchestrating – the response to various outages that we had. They weren't orchestrating the response for the field people, telling them you need to go here, you need to go there, we need to do step restoration. [] *So we really needed a supervisory person on shift to do that.*

Tr. 91 (emphasis added).

Importantly, the RSS has never been a bargaining unit job, and has always been viewed by management as a supervisory level position. Tr. 95; 97. Today, the RSSs are responsible for the overall operation of the ESCC while on shift, including all work performed by themselves and the Operators that they oversee. Tr. 93.

B. Overview of the RSS Position

1. Location

The RSS position is physically located within the ESCC, often referred to as the “Control Room.” Tr. 48. Board Ex. 4. The Control Room contains two rows of consoles with large desks. Tr. 113. The Level 1 and Level 2 Operators sit in the front two rows, and the RSS sits behind the back console to ensure that they “always have the bigger picture” and can “get a[n] [] overview” of the entire room. Tr. 114; 402. The DSSs sit in glass offices at the very back of the room. Tr. 114; 402.

2. Schedule

RSS and Operator schedules follow a six (6) week rotation. CX 3. Each RSS spends four (4) consecutive weeks “on shift” (alternating days and nights). CX 3; Tr. 101; 111. Each shift is twelve (12) hours in length, except for the eight (8) hour shifts worked during weeks five (5) and

six (6), which are dedicated to “spares”¹⁷ and training. Tr. 97 – 100. Each team of Operators is associated with an RSS with respect to the arrangement of the schedule. CX 4. For example, RSS Matthew Bouchard’s team is comprised of Operators Anderson, Shahan and Hartawan. CX 4; Tr. 101-102. Bouchard and his team are assigned to work the same rotating shift throughout the six weeks.

3. Duties & Responsibilities

In general, the RSSs are NERC-certified operators who plan, schedule, and coordinate activities associated with the minute-to-minute operation of the transmission facilities under the operating jurisdiction of the ESCC dispatch center. Tr. 121; CX 5. When on shift, the RSSs are responsible for *all* work occurring on the transmission system during their shift, including approving all switching that occurs on their watch and coordinating the day’s work. Tr. 110-111; 121-122. As such, their core function is to ensure that not only the PSNH transmission system maintains reliability and safety, but also the broader electrical transmission grid which flows throughout most of North America. See CX 1; CX 5; Tr. 39; 56; 117.

As the department was expanding, the need for “supervision on shift” became apparent. Tr. 148. Therefore, the RSS was created to “provide adequate leadership and supervision to all on-shift System Operations personnel, as well as provide guidance and direction to field personnel during off hour outage restoration response.” CX 5. Importantly, the RSS is the highest management level authority working nights and weekends in the ESCC and the SOC. Tr. 146; *see also* Tr. 150 (“the RSS was always seen as the more technical lead on the off hours.”) Accordingly, when operational decisions must be made on shift, the expectation is that the RSS makes such

¹⁷ “Spare” week is to make up for any training that the RSS may have missed and, in the event other RSSs on shift are absent for any reason, an RSS could be summoned for on-shift duty during a “spare” week. Tr. 104-105.

decisions and does not need the permission or involvement of the DSS or manager prior to making such decisions. Tr. 147.

Globally, the RSS coordinates the “day’s work” and is “the supervisor responsible for the personnel and the system [] providing guidance, providing oversight, coaching the operators, and providing a backstop for or the authority on making the ultimate decision of what the shift should do in any particular situation.” Tr. 122; 146. RSSs have the authority to make the moment-to-moment operational decisions necessary to ensure the safe and reliable operation of the transmission system. Tr. 115.

For example, for planned work, depending on the level of complexity, the RSS is responsible for assigning work packages to the Operators on shift. *See* Tr. 112 (adding that, “[i]n some cases the RSS will take some of those jobs themselves[.]”); Tr. 207. Broadly speaking, for the Operators, the RSS is responsible for coordinating “the day’s work.” *See* Tr. 122 (Mr. Dickie testifies that his expectation is for the RSS to “hand” out work to the Operators working under him) *and* Tr. 490 (RSS Rossi explains that when he “hands” an Operator a job, he is assessing whether the Operator is capable of handling the task at hand). The RSSs use their independent judgment to determine which Operator will perform each work package based on the level of experience of each Operator, the level of complexity of the project, and the balance of the remaining work that needs to be addressed on the shift. Tr. 106; 115.

For real-time unplanned situations, where immediate action is required, RSSs provide oversight and direction to resolve the condition which inherently involves utilizing independent judgement in assigning tasks to individual Operators on shift to restore the system to a reliable and safe condition. The RSS also has the authority to bring in additional Operators, if needed, and to hold an Operator on a job if the job demands that Operator’s presence past the end of his designated

shift. Tr. 116-117. Additionally, the RSSs have the authority to coordinate with the Line Department as needed to solicit field support and to assign additional personnel if, in their independent judgment, it is warranted. Tr. 115; 120.

Upon the start of each shift, the RSSs receive a “ESCC shift turnover sheet” from the previous RSS. CX 11 at 15; Tr. 111; 147. At the start of the day shift, much of the work is outgoing; and at the start of the night shift, much of the work is incoming. Tr. 112. The turnover sheet includes documentation of matters that occurred during the previous shift, such as equipment that is out of service or tagged out while on shift. Tr. 147. The RSS must understand fully what occurred during the previous shift before signing off on the turnover sheet. CX 11 at 15; Tr. 111; Tr. 151; *see also* Tr. 499. RSS Rossi agreed that initialing the turnover sheet is a function that “cannot be delegated” and if an Operator signed the turnover sheet in the place of an RSS, he would be “functioning” as a shift supervisor. *Id.* Mr. Ross also agreed that certain other functions associated with shift turnovers simply cannot be delegated. Tr. 505; CX 11.

In addition to engaging in a turnover, the RSS must also lead a shift briefing for the entire team, which involves reporting out relevant information from the previous shift to ensure everyone on the team is on the same page. Tr. 112; 565. The expectation that the RSS lead the shift briefing is expressly set forth within the “Responsibilities” section of Operating Procedure-0040: System Operations Shift Responsibilities and Turnover. *See* CX 11 (stating that the RSSs “*Supervise System Operator Supervisors.*”)(emphasis added); *see also* Tr. 516 (RSS Rossi affirms that the shift briefing is the responsibility of the RSS). Furthermore, the Procedure goes on to state, “The [RSS] provides leadership and supervision to all on-shift System Operations personnel, as well as guidance and direction to field personnel during off hour outage restoration response. In the

absence of the Supervisor, Distribution System Operations, the [RSS] will provide direction and oversight to DSOs during abnormal and emergency operating conditions.” CX 11.

Importantly, the RSS is held accountable if the shift brief is not conducted. *See* CX 11, p. 3; Tr. 566; Tr. 515 (RSS Rossi admits that conducting the shift brief is a “responsibility that lies solely with the shift supervisor.”)

In responding to “abnormal system conditions,” the RSS is empowered to “mobilize additional resources as necessary.” CX 5; Tr. 154. The RSS has the final say as to what additional resources are necessary. Tr. 154-155. During emergent conditions, such as during a severe storm, ESOP 105 gives controllership to certain authorized persons to restore power within tagged boundaries. CX 15; Tr. 133. Though not explicitly identified within Eversource System Operating Procedure (“ESOP”) 105 – Delegation of Controllership Agreement, the authorized persons, referred to as “system control center management,” are understood to include the RSS. Tr. 133. Additionally, when on shift and during “abnormal and emergency operating conditions,” the RSS is empowered to not only direct Operators in the ESCC and personnel in the field, but also Distribution Shift Operators (“DSOs”) within the SOC. Tr. 120; 150.

In the event a SCADA contingency analysis detects thermal overloads, interoperability regional limit violations, or system out of limit conditions, the RSS must develop a plan to address the issue in conjunction with ISO-NE. Tr. 139-140. The RSS is responsible for the development of the contingency plan and its execution. Tr. 141. In the event the RSS delegates the creation of the plan, he is still responsible for it and must sign off on it prior to execution. Tr. 141.

Additionally, the RSS is trained to serve as Restoration Coordinator during abnormal system conditions because it is the Company’s expectation that the RSSs will serve in that role should the grid go into a “restoration event;” i.e., a power system emergency such as a blackout.

Tr. 385; *see also* CX 10 at 5 (explicitly stating that *only* the System Operations Manager, DSSs, and RSSs are permitted to fill the Restoration Coordinator position). Although both Operators and RSSs receive portions of this training, only the RSSs receive the full training. Tr. 384. Notably, an Operator has *never* served in the role of Restoration Coordinator. Tr. 385

Lastly, RSSs do, on occasion, change the reporting location of Operators. For example, in April of 2023, an RSS made the judgment call that an Operator who had been reporting to the back-up ESCC location should report to the primary ESCC location. Tr. 576. The RSS determined that this reporting location change was necessary due to the needs of the next day's workload. Tr. 576. Importantly, the RSS did not consult with the DSS prior to changing the Operator's location. Rather, the DSS was made aware of the change after the fact. Tr. 595-596.

C. The RSS Exercises Independent Judgment in Making Work Assignments

The RSS exercises independent judgement in making assignments of both Operator and field personnel. In managing their teams, each RSS becomes familiar with what each Level 1 and Level 2 Operator is "capable [of] and what they struggle with [] and what they can perform with minimal oversight." Tr. 156. This is because there is a "range of ability" within each level. Tr. 157. Therefore, in planning the work for each shift, RSSs take into consideration not only the official level of each operator but also their "overall ability within that level." Tr. 157. *See also* Tr. at 90 (Mr. Dickie states that "you [can't] just give every operator [a] complex job without putting some thought into whether or not they could do that type of work") *accord* Tr. 490; 495 (RSS Rossi explains that when he "hands" an operator a job, part of his determination in making that assignment is whether the Operator is NERC certified and is "comfortable with the job and understands the job.")

Although all NERC-certified Operators work under a complex realm of procedures, the procedures do not anticipate every potential scenario that occurs while monitoring the transmission system, nor do they dictate every component of the work. Tr. 271 (Mr. Dickie explains “a procedure is written for the most common thing[s];” however, “there’s some discretion within that band on how you comply with the procedure.”)

Certain specific contingencies, in particular, call for the independent judgement of the RSS. For example, when RSS Rossi needs to change a switching order, he bases the decision on “many variables that would cause the switching to be changed.” Tr. 487; *see also* 496-497 (RSS Rossi testifies that he assigns work “based on the information Operators share with him.”) Additionally, if – upon review of the “next day’s study” on his nightly call with ISO-NE – the RSS determines that there will be a problem with load for the next day, he has the authority to cancel the job (if it has not yet started) or to recall the line to put it back in service. Tr. 578-580; 596-597. Importantly, the RSS does not need permission from anyone else to do so. Tr. 580; 596-597.

Similarly, if SCADA were to go down, the RSS would be expected to coordinate *who* is going to do *what* and *when* and evacuate all personnel to backup control. Tr. 161. When alarms sound, the RSS must determine whether they are “nuisance alarms” (triggered by benign factors like the wind), whether a troubleshooter should be dispatched from the SOC to assess the situation, or whether the situation can wait to be addressed during a future shift. Tr. 163.

In essence, as Mr. Dickie explained, if the Company required mere machines to conduct the work of the RSS, they would have purchased more computers or computer programs to get the work done. Tr. 229. Instead, the RSSs serve to digest complex information, render judgment on that information, and execute. Tr. 229. The procedures exist for information that is clear; however,

the RSSs exist to analyze unclear information based on what they know about the “operating characteristics of the system” and issue orders accordingly. Tr. 229-230. He further elaborated:

And that’s why you have a supervisor on shift To take . . . information, help the people that are working for them make the proper decision

[S]ome information we know is no good. They know it’s not needed, it’s too much information and you have to ignore it[.] So they make that determination based on [] their experience, based on their judgment [] based on how they know about the operating characteristics of the system

[I]f I could get a simple input output machine to do all that, I’d build one. And I’d say, I don’t . . . need to hire a person. But we don’t have that You have to have human beings to do that.

Tr. 229-230.

D. The RSS Has the Authority to Fully Staff Each Shift

In the event one of the Operators on an RSS’s team calls out sick, the RSS has the authority to identify another operator to “fill” the vacant position on that shift. Tr. 104-105. The RSS would base his judgment on the nature of the work required on the upcoming shift, the skillset and experience level necessary to perform the work, and whether the individuals who are working “spares” or “training” have the requisite skillset necessary to get the job done. Tr. 105-106. For example, the work involved in taking out a bus section at a substation is complex and requires the expertise of a more seasoned Operator. Tr. 108. To that end, an RSS could decide to either call in a more experienced Level 2 Operator to fill the shift on his own or, he could choose to call in a less experienced Operator and use the shift as a training opportunity and either perform the work with him or pair him up with a more-seasoned Operator. In either scenario, it is the RSS who uses his own independent judgment to make the determination as to the manner in which the shift should be filled. *See e.g.*, Tr. 105, 207-08.

E. The RSS Has the Specific Authority to Direct Field Personnel

The RSS “provide[s] guidance and direction to field personnel during off hour outage restoration response.” CX 5. For example, depending on the complexity in addressing a fault in a line, the RSS has the authority to coordinate with the Line Department as needed to solicit field support. Tr. 115; 120. Because the ESCC has ultimate authority of system operations, RSSs make the determination as to whether to call in field personnel to address emergent situations, the order in which certain field work is to be performed, where the field personnel are to report, and whether or not such personnel must remain on the job even beyond the end of their shift. Tr. 119, 120, 149.

When unplanned events occur on the overnights or weekends, it is the RSS who determines whether field crews must be dispatched to address an issue. Tr. 217. In the event of larger outages, the RSS determines how many crews are necessary on site. Tr. 217; *see also* Tr. 492-493 (RSS Rossi describes himself as “proactive by ensuring adequate crews and equipment are *assigned* to outages)(emphasis added). Importantly, the RSS is the individual empowered to contact the SOC to solicit additional field crews, when required, as personnel in the Line Department cannot make that determination on their own. Tr. 218; 567. Depending on the specific need for support, the RSS has the authority to turn to the 1250 call list (to summon substation personnel) as well. Tr. 124-125; 568.

Similarly, in adhering to Remote Terminal Unit (“RTU”) procedures, RSSs have the authority to dispatch field personnel to ensure coverage at certain substations that are required to be monitored 24/7. Tr. 592. There are certain other substations that do not typically require 24/7 coverage; however, depending on real time system conditions, the RSS has the authority to upgrade the status of substations as they deem necessary. Tr. 593. In making decisions to send

field personnel to substation sites, the RSS is not required to obtain the permission of a DSS prior to taking action.

Importantly, RSSs have the authority to overrule a field supervisor to order a field employee to a site because “shift supervisors have the authority to upgrade events on the system because they have the entire picture of what’s going on.” Tr. 567.

RSSs additionally have discretion in sequencing the work of field employees in instances where they need to summon crews to address power issues “upstream” prior to returning to work “downstream.” Tr. 221. The RSS also can keep line workers in the field on site such that they would receive overtime because they can keep a field employee on site until “whatever is repaired is repaired.” Tr. 220-221; Tr. 226.

F. The RSS is Held Accountable for the Activities of the Operators

RSSs are held accountable for errors made by Operators on shift which the RSSs could have prevented. Tr. 142-143; 340-341; 380. In testimony, Director David Cloutier recounted the issuance of discipline to RSS Curt Horning. Mr. Cloutier explained that, although management does not discipline individuals “for every switching error,”¹⁸ the internal analysis (“IA”) investigation revealed several factors that justified Mr. Horning’s discipline for a switching error made on his watch.

There, an Operator working under Mr. Horning’s shift had issued a work clearance improperly. Approximately an hour and a half had passed between the detection of the error and when the Operator had issued clearance for the work. During the internal investigation of the

¹⁸ Although the Union elicited ample testimony regarding Mr. Diamond’s switching error which resulted in approximately outages in Laconia, NH, and the absence of any discipline issued to RSS Matthew Urie as a consequence, Mr. Cloutier distinguished the two incidents and why management handled them differently. The nature of Mr. Diamond’s switching error was somewhat instantaneous. Because little to no time existed to intervene to stop the error, the RSS on shift was not disciplined for the incident because there “was no realistic level of oversight” that could have stopped the error from occurring. Tr. 571. Mr. Horning’s error, by contrast, involved an error where intervention was possible, and the resultant outages were preventable. Tr. 572.

incident, Mr. Horning had commented that he had believed that the job involving the error had seemed “abnormal.” Tr. 572. Because management deemed that Mr. Horning could, and should, have caught and corrected the error in time to prevent the resultant outages, he received discipline for his lack of oversight of persons working for him on shift.

Management’s views of Mr. Horning’s error are memorialized within both his mid-year and year-end reviews. In his mid-year review, management emphasized not only the severity of the switching error, but the impact it had on both Mr. Horning’s reputation and the reputation of the ESCC. The mid-year review notes Mr. Horning’s failure to “take ownership” of the error, as demonstrated by his attitude during the IA. Additionally, management reminded him that “[i]n our roles as leaders we are responsible for our actions and attitudes *as well as our crews’ actions and attitudes.*” PX 26 (emphasis added). Notably, Mr. Horning earned a “Below Target” rating in his mid-year review. PX 26. By year-end, Mr. Horning’s performance evaluation had improved, noting his “more proactive hands on approach with [his] team” and his increased efforts to assist Operators with “more complex switching” as evidence of increased “system ownership.” CX 20. Based on his improved performance, his rating improved to Successful Contributor. CX 20.

G. RSS Input and Evaluations Influence the Progression of Operators

RSSs provide input frequently as to whether an Operator should be promoted within their progression. Tr. 585-586. Each Operator is issued a qualification card (“Qual Card”) at the start of his career with PSNH, which outlines the skills and experiences one must have to progress from a Level 1 to a Level 2. To achieve Level 2 status, a Level 1 Operator must successfully complete both a verbal and simulated component in order to advance to the next level in his progression. Tr.

234. Furthermore, as Mr. Cloutier explained, when an Operator¹⁹ may be ready to progress to a Level 2, “we will seek the input of the [RSS] whose (sic) been on the rotating shift with this person for . . . several months. . . . [B]ased on your experience with this individual’s performance has been and their knowledge, *do you feel they’re ready to become qualified* a [Level 2 Operator]. . . .” Tr. at 586. (emphasis added). In fact, RSS Rossi admitted to providing feedback to ESCC Manager, Marc Dionne, in relation to an Operator progressing from Level 1 to level 2. Tr. 607.

The RSSs are involved in coaching the Level 1 Operators on the verbal component of their progression and are qualified²⁰ to sign off on the Qual Card necessary for a Level 1 Operator to progress to a Level 2 Operator. Tr. 235. Importantly, promotions have been delayed when an RSS determined that the Operator did *not* yet provide the requisite skills to progress to a Level 2 Operator. *See generally* Tr. 585-586.

In testimony, Director David Cloutier recalled the specific example of the promotion delay of Operator Loren Scott, based on the feedback provided by RSS Matthew Urie. Because Mr. Urie determined that Mr. Scott needed additional upgrade training prior to moving forward in his progression and refused to sign off on Mr. Scott’s progression on those grounds, Mr. Scott’s progression was delayed by approximately two (2) months. Tr. 587. (“And we had an instance earlier this year where a [RSS] gave input that an operator was not ready to become a [Level 2 Operator]. And based on that feedback, we waited approximately two months to move forward with qualifying this operator. . . .” Tr. 586)

¹⁹ Notwithstanding the fact that RSSs are grouped together with Level 1 and Level 2 Operators and not DSSs in the Personnel Section of the Qual Card, Mr. Cloutier explained that is because Operators and RSSs are qualified on shift personnel and are required to complete Qual Cards as part of their training, whereas DSSs are not. Tr. 562.

²⁰ Level 2 Operators are also qualified to sign off on the Qual card of a Level 1 Operator. Tr. 319 -320.

H. RSSs Coach and Assist in the Training of Level 1 & Level 2 Operators

One of the core expectations of the RSS is to coach the Operators in improving their performance while working on the transmission system. Tr. 146. RSSs assist in informal on-the-job training to assist Level 1 Operators in enhancing their switch-writing skills by providing both “objective and subjective feedback.” Tr. 234. For example, in making decisions about what work to assign to whom, RSSs will often assign planned work that is “smaller in nature” to Level 1 Operators to provide them with on-the-job training opportunities. Tr. 207-208. In addition, as Level 1 Operators make progress on Their Qual Cards, RSSs often assist them in preparing for the verbal component of the qualification. Tr. 234.

RSSs also perform a SIMS (Safety Incident Management System)²¹ review on the Level 1 and Level 2 operators. Tr. 172-175; CX 13; CX 17. Upon completion of their observations, the RSSs provide feedback to the Operators about what behaviors were not up to standard and they coach to improve (“CTI”) accordingly. Tr. 177. RSS Rossi agreed that one of the purposes of performing SIMS observations is “training because you’re trying to look for something that needs improvement.” Tr. 435. He added that during a SIMS review, if the RSS observes “something that they didn’t do right, you coach them, and you – and then you write up the SIMS and how you coach them.” *Id.* RSSs are supposed to complete three (3) SIMS observations of operators per month. Tr. 435. Importantly, Level 2 Operators do not have access to the SIMS observation program and are not required to perform these observations. Tr. 527.

²¹ Although colloquially referred to as the “SIMS observation,” the Company policy document describing this procedure is called the “ESOP 95: Control Center Switching and Tagging Observation Program.”

I. The PSNH Organizational Chart Does Not Reflect the Reality of the Control Room

The PSNH organizational chart shows the six RSSs as reporting to DSS Andrew Grady. CX 2. This representation of the organizational structure of the department is a function of how the Human Resources department groups individuals into “pay bands” and therefore does not reflect fully the reality of the Control Room. Tr. 81. Mr. Dickie explained that the DSS and RSS “share the same responsibilities” and “are considered within the same grouping from a management perspective.” Tr. 153-154. He further explained that the RSSs appear on the Company organizational chart in the same manner as the working foremen²² within PSNH; i.e., although they oversee the work of employees within their respective departments they do not have individuals “reporting up” to them within the organizational chart. Tr. 81.

Instead, the true place of the RSS within PSNH’s corporate hierarchy is best understood by examining the leads within the SOC²³. *See* CX 2 at 86-88 (showing SOC “Distribution System Operators” reporting directly to “Lead, Systems Operations Center”); Tr. 78; *see also* Tr. 120 (explaining that the lead within the SOC is “the equivalent RSS.”) Much like the RSS, the SOC lead is the ultimate decision maker on their shift. Tr. 78. They are responsible to hand out work and ensure it is completed on time. *Id.* As is the case with the RSS, SOC leads are responsible for

²² Region One has previously determined that the working foremen within PSNH’s Line Department *are* “supervisors” within the meaning of Section 2(11) of the Act. *Public Service Company of New Hampshire*, Case Nos. 1-RC-22168, 1-RC-22169, 1-RC-22170 (March 20, 2008). It should be noted that when the Region made this determination, the working foremen did not, nor do they now, have employees “reporting up” to them on an organizational chart.

²³ Mr. Dickie requested a change to be made to PSNH’s organizational chart *prior* to the Union’s filing of its petition, so that the hierarchy of the SOC and the ESCC would reflect the reality of that control room. Tr. 265. Soon after the request was made to update the organizational chart, the Company received the present petition and, as such, no changes were made to the structure of the potential unit. The changes to the organizational chart were effectuated after the filing of the petition only as they relate to the SOC, as no petitions have been filed with respect to employees within the SOC. *Id.*

administering shift changes. *Id.* Lastly, just like the RSS position, the SOC lead position originated due to the on-shift needs of a growing department. Tr. 88-89.

As Mr. Dickie summarized, “the reality is that the persons on the shift, the DSOs, associate DSOs in the system operation center report up to the leads, and in the ESCC, the Level 1, Level 2 operators report up to the RSSs.” Tr. 264.

J. The RSSs are Leaders Within the Organization

1. The Company Views the RSS Role as a Leadership Position

The RSS role was created, and is currently viewed by PSNH senior leadership, as a supervisory position. As such, the RSS is expected to “set and communicate direction[,] priorities[,] and goals.” Tr. 188; CX 5. In testimony, Mr. Dickie explained that this prerogative for the RSS was developed in recognition of the expanding needs of the business and a part of the “culture change” of the organization. Specifically, Mr. Dickie testified that in creating the position, he wanted the RSS to be empowered to communicate to the Operators how their work helps the Company meet its financial goals and how their work fits into the overall goals of the Company as a whole. Tr. 189.

Both the RSS and Level 2 Operators are NERC-certified operators. *See* CX 5; 7. For that reason, a comparison of the two position descriptions reveals multiple overlapping duties and responsibilities. *Id.* However, when comparing²⁴ the expectations of the two positions under the rubric of “Leadership Behaviors/Competencies,” represented in the table below, the differences are striking. On the other hand, when comparing the same rubric to that of the DSS, a position that is undoubtedly considered supervisory, the similarities are striking:

²⁴ Language within the RSS description which varies from the Level 2 Operator position is represented in bold text.

Leadership/Behavior Competencies	DSS	RSS	Level 2 Operator
<i>Set and Communicate Direction and Priorities</i>	<ul style="list-style-type: none"> ▪ Communicate priorities and goals (company, department, team) ▪ Show how employee's work fits in ▪ Provide business updates, news ▪ Communicate, communicate, communicate 	<ul style="list-style-type: none"> ▪ Communicate priorities and goals (company, department, team) ▪ Show how employee's work fits in ▪ Provide business updates, news ▪ Communicate, communicate, communicate 	<ul style="list-style-type: none"> ▪ Know the business plan and how your role connects to it ▪ Identify problems, issues; take responsibility for resolution ▪ Set high standards for self; deliver quality performance ▪ Raise ideas for improvement ▪ Communicate, communicate, communicate
<i>Build Trusting Relationships</i>	<ul style="list-style-type: none"> ▪ Role model honesty/integrity in communication and action ▪ Balance “getting results” with concern for individual needs ▪ Have honest dialogue with employees; get to know them 	<ul style="list-style-type: none"> ▪ Role model honesty/integrity in communication and action ▪ Balance “getting results” with concern for individual needs ▪ Have honest dialogue with employees; get to know them 	<ul style="list-style-type: none"> ▪ Follow through on commitments made to manager, colleagues, and customers. ▪ Address difficult or controversial issues and encourage others to do the same. ▪ Have honest dialogue with others
<i>Manage and Develop People</i>	<ul style="list-style-type: none"> ▪ Set realistic performance objectives and expectations ▪ Give ongoing, honest feedback; coach for success ▪ Recognize good performance ▪ Visit crews in the field ▪ Remove obstacles [in] day-to-day performance 	<ul style="list-style-type: none"> ▪ Set realistic performance objectives and expectations ▪ Give ongoing, honest feedback; coach for success ▪ Recognize good performance ▪ Visit crews in the field ▪ Remove obstacles [in] day-to-day performance 	<ul style="list-style-type: none"> ▪ Set performance goals that align with department and company goals ▪ Meet regularly with your supervisor/manager to discuss your performance ▪ Seek opportunities to develop skills and gain knowledge through on the job opportunities, i.e.

	<ul style="list-style-type: none"> ▪ Provide tools, information, training 	<ul style="list-style-type: none"> ▪ Provide tools, information, training 	working on projects, attending meetings, etc.
<i>Foster Teamwork and Cross functional collaboration</i>	<ul style="list-style-type: none"> ▪ Encourage cooperation/remove obstacles between work groups/departments ▪ Encourage collaboration/peers helping peers 	<ul style="list-style-type: none"> ▪ Encourage cooperation/remove obstacles between work groups/departments ▪ Encourage collaboration/peers helping peers 	<ul style="list-style-type: none"> ▪ Work collaboratively within and across the organization to achieve “One Company” and other goals ▪ Recognize and address cross functional implications of your work
<i>Create a Diverse & Inclusive Workforce</i>	<ul style="list-style-type: none"> ▪ Ask for employee input on work process/practice improvements and before implementing change that will affect them ▪ Encourage ideas 	<ul style="list-style-type: none"> ▪ Ask for employee input on work process/practice improvements and before implementing change that will affect them ▪ Encourage ideas 	<ul style="list-style-type: none"> ▪ Incorporate the diverse ideas and perspectives of team, colleagues, and customers in your work
<i>Lead Change</i>	<ul style="list-style-type: none"> ▪ Deliver effective, positive communications about change to your team ▪ Exhibit a “can-do” attitude to successfully implement changes in priorities and work processes ▪ Respond positively to new demands or circumstances 	<ul style="list-style-type: none"> ▪ Deliver effective, positive communications about change to your team ▪ Exhibit a “can-do” attitude to successfully implement changes in priorities and work processes ▪ Respond positively to new demands or circumstances 	<ul style="list-style-type: none"> ▪ Proactively seek out opportunities to improve business performance and customer service. ▪ Respond positively to new demands or circumstances ▪ Exhibit a “can-do” attitude to support changes in priorities and work processes
<i>Focus on the Customer</i>	<ul style="list-style-type: none"> ▪ Ensure that everyone on the team understands our customer promise and provides superior service ▪ Be a role model for the team on 	<ul style="list-style-type: none"> ▪ Ensure that everyone on the team understands our customer promise and provides superior service ▪ Be a role model for the team on 	<ul style="list-style-type: none"> ▪ Deliver superior service to our customers, both internal and external, in a reliable, attentive, courteous, quality, proactive and timely manner

	delivering superior customer service	delivering superior customer service	
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RSSs, unlike the Level 2 Operators, are expected to communicate business goals and provide business updates to their respective teams. CX 5. They are expected to coach the Operators on their shift; provide them with feedback, tools, information, and training; recognize the excellent performance of others. *Id.* RSSs are expected to proactively encourage collaboration and solicit ideas from their teams before implementing change and communicate any changes to norms or procedures to the group. *Id.* The Level 2 Operator expectations, by contrast, are focused on individual goals and contain no language about leading or developing other members of their respective teams. CX 7.

As the comparison between position descriptions clearly reveals, the RSSs are much more akin to the DSSs than to the Level 2 Operators. Much like the DSSs, the RSSs are expected to “[c]ommunicate priorities and goals” to the “team,” to “role model honesty/integrity,” to “get to know [employees], and to show employees “how their work fits in” to the Company’s overarching goals. CX 5; PX 21. Additionally, both positions are expected to give employees “ongoing, honest feedback,” to “coach for success,” and “[r]ecognize good performance” as well as to “[e]ncourage cooperation” and “collaboration” amongst the various departments and employees within the team. *Id.*

The similarities are unsurprising, as the RSS is essentially expected to stand in the shoes of the DSS during nights and weekends. *See* Tr. 146-147; *see also* Tr. 150 (“the RSS was always seen as the more technical lead on the off hours.”) *and* Tr. 153-154 (the DSS and RSS “share the same responsibilities and they are considered in the same grouping from a management perspective.”) Importantly, there exists no dispute regarding the supervisory status of the DSSs.

See Tr. 495 (RSS Rossi asserts that the DSS “is in charge of the control room, because everybody reports to the day supervisor”) accord Tr. 508 (RSS Rossi insists that the Operators “report” to the DSSs).

2. RSS Self-Assessments Reveal that They View Themselves as Supervisors

In addition to Company documents and witness testimony revealing that PSNH management clearly views the RSSs as supervisory employees, their own performance self-evaluations evince the same understanding. RSS Rossi’s 2021 performance evaluation serves as a striking example of how the RSSs view themselves in relation to the Operators that they oversee on shift. RSS Rossi described himself as “being proactive by ensuring adequate crews and equipment are assigned to outages.” CX 19; Tr. 492-493. He also stated (twice in his review), “I *manage* my team by knowing there (sic) strengths and weaknesses and *assigning throughout the room accordingly*.” CX 19 (emphasis added); Tr. 495. Finally, RSS Rossi acknowledged that as an RSS, he “take[s] ownership and oversight of all work under ESCC control area, and provide assistants (sic) to SOC.” CX 19.

Mr. Horning’s performance self-evaluation also reveals a similar view of the RSS role within the hierarchy of the Control Room. See CX 20. In it, he described his positioning within the Company as part of the “management team” (“I feel that *we as a management team* have had a very successful year.”), referred multiple times to Operators on his shift as his “subordinates,” and highlighted the fact that he was referred to as a supervisor by one of the operators: “I was told this year by one of my employees that *I was the best supervisor* he had ever worked for. He is a senior operator who has a diverse back ground (sic) in the electrical industry. He has worked for many supervisors over the years. . . . For him to make a comment like that, I feel is proof of my leadership behaviors.” CX 20; Tr. 583-584. (emphasis added).

K. RSSs Attend Management Meetings

RSSs attend meetings that are “exclusively for supervisory personnel.” Tr. 235. The tradition started in response to management’s detection of undesirable occurrences on shift, and a sense that performance was not up to par, and the meeting were initially held on a weekly basis. Tr. 235. These meetings continue to be held monthly to discuss “continuous performance improvement,” and include the DSS, manager and director of the organization. Tr. 236.

Additionally, in late 2020 and/or early 2021, all RSSs were offered Dale Carnegie courses to support leadership development. Tr. 584.

L. Compensation

The RSSs are salaried. Tr. 97. Because the position has never been in the bargaining unit, and has always been considered supervisory, the position is on a different pay scale from bargaining unit jobs at PSNH. Tr. 94. On average, RSSs make approximately \$7,000-\$10,000 *more than* the Level 1 and Level 2²⁵ Operators.²⁶ Tr. 97; 302; PX 15. Notably, the average annual bonus compensation of the RSS (\$15,616.67) is higher than both the Level 2 (\$14,522.22) and Level 1 (\$6,657.14) Operators.

LEGAL ARGUMENT

I. The RSSs are Supervisors Within the Meaning of the Act

The RSSs are supervisors within the meaning of the Act, and cannot be included in the bargaining unit. Section 2(11) of the Act defines a supervisor as:

[A]n individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances or

²⁵ Although the RSSs are within the same “pay band” as the Level 2 Operators, there is stratification within each band, and the RSSs earn more than the Level 2 Operators. Tr. 256-257.

²⁶ Like the Level One and Level Two Operators, the RSSs receive an annual stipend or “pay adder” in the amount of \$13,700, which functions as a lump sum shift differential that compensates them for working nights, weekends, holidays, and incidental overtime. Tr. 96; 377.

effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Maine Yankee Atomic Power Co. v. National Labor Relations Board*, 624 F.2d 347, 360 (1st Cir. 1980). *See also, Harvard University*, 1-RC-079519 (2012), citing *Chicago Metallic Corp.*, 273 NLRB 1677, 689 (1985). Because PSNH is the party claiming that the RSSs are supervisors, PSNH carries the burden of proving their supervisory status. *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 710-12 (2001).

Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981); *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (individuals are statutory supervisors if “(1) they hold the authority to engage in any 1 of the 12 supervisory functions; (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is held in the interest of the employer.”).

A. The RSS Uses Independent Judgment in Responsibly Directing the Operators

In *Oakwood Healthcare, Inc.*, the Board stated that if an individual has employees “under” him and if that individual decides “what job shall be undertaken next or who shall do it,” that individual is a supervisor, provided that the direction is both “responsible” and carried out with independent judgment. 348 NLRB at 691. Direction is “responsible” if the individual directing the task is “accountable for its performance. This means that the directing individual “has the authority

to take action, if necessary, to ensure that the task is performed correctly by the employee, and that there is a real prospect of material consequences to the directing individual's terms and conditions of employment, either positive (e.g., a merit increase or bonus) or negative (e.g., a demotion or termination), if the task is or is not performed correctly by the employee." *Woodman's Food Market, Inc.*, 359 NLRB. No. 114 (April 30, 2013).

The evidence establishes that the work performed by the RSS satisfies this definition of "responsible direction." In determining which tasks the Operators should perform and when, the RSSs exercise independent judgment in assessing the skills and capabilities of each Operator in relation to the demands of the task at hand. Tr. 115; 487. Multiple variables come into play in assessing the nature of the task to be performed, such as the severity of weather conditions or the complexity involved in addressing a faulted line. Tr. 115. Therefore, the RSS must assess these variables and the capabilities of the Operators alongside the guidance of various operating procedures to arrive at a final determination.

Throughout its witness testimony, the Union emphasized the heavily regulated nature of the industry and the abundance of NERC and Company operating procedures that guide the work of all individuals who work in the Control Room. The Company does not dispute these facts. However, the suggestion that the RSSs mindlessly turn to procedure in assigning tasks and responding to emergent conditions misses the mark and quite frankly, is insulting to the complex nature of their job. As Mr. Dickie explained in testimony, the decisions made by the RSSs while on shift are not ones that can be generated by "input/output" machines. Rather, they require the experience of a seasoned Operator capable of applying discretion and independent judgment within the parameters and guidelines offered by the procedures.

The RSSs are held accountable for the actions of the Operators on their watch in a multitude of ways, as evidenced by their shift briefing duties, final sign-off on switching orders, SIMS observation obligations, and, importantly, the fact that they may face discipline for errors made by Operators on their watch. Importantly, the RSS is the highest management level authority working nights and weekends in the ESCC and the SOC. Tr. 146; *see also* Tr. 150 (“the RSS was always seen as the more technical lead on the off hours.”) There is no other member of management working on shift alongside them. Accordingly, when operational decisions must be made on shift, the expectation is that the RSS makes such decisions and does not need the permission or involvement of the DSS or manager prior to making such decisions. Tr. 147.

It is worth noting that the amount of time RSSs are on shift (120 hours/week) exceeds the amount of time DSSs are scheduled to work in the Control Room (45 hours/week); meaning, the RSSs are the highest management level authority working in the Control Room for more than twice the amount of hours during the week than the DSSs.

RSSs are responsible for completing a turnover sheet at the close of each shift and conducting a shift briefing to keep the entire team abreast of what occurred during the previous shift and what to expect during the oncoming one. Although RSS Rossi repeatedly insisted that every Operator is qualified to complete these items, he ultimately conceded that completion of the turnover sheet is something that “cannot be delegated” and that if an Operator signs the turnover sheet in the place of an RSS they would “functioning” as a shift supervisor. Tr. 499.

In addition to engaging in a turnover, the RSS must also lead a shift briefing for the entire team, which involves a transfer of information from one shift to the next to the entire team. Although the entire team participates in a shift brief, it is the RSS who is held accountable if it is not conducted. *See* Tr. 515 (RSS Rossi admits that conducting the shift brief is a “responsibility

that lies solely with the shift supervisor.”) As Mr. Cloutier explained in testimony, the turnover is an individual task unlike the briefing, which is for the group. Therefore, the RSS “*leads* the brief, reporting system conditions and making sure everyone knows what they are responsible for.” Tr. 565. (emphasis added).

Furthermore, although every Operator completes switching orders while on duty, the RSS possesses the ultimate authority for the accuracy of these instructions. *See* Tr. 379 (Mr. Dickie testifies that although 15 different people have signed off on PX 14 (Switching Order No. 23-00020), the RSS is the individual who is “ultimately accountable” for its execution.).

The requirement of RSSs to perform SIMS evaluations on the Level 1 and Level 2 Operators also demonstrates that the RSSs are accountable for the performance of these employees and are expected to coach them, when such an opportunity arises. Tr. 172-175; 435; CX 13; CX 17. Importantly, the SIMS check goes beyond a passive observation and notation of rights and wrongs. Rather, RSSs are expected to analyze what they observe and coach to improve the work of the Operators accordingly. Tr. 177. By contrast, the Level 2 Operators do not have access to the SIMS observation program and are not expected to conduct these reviews on their fellow Operators. Tr. 527.

Notably, the SIMS policy makes repeated reference to the fact that “designated supervisors” are to perform these observations. CX 13 at 3, 5, 6. This is unsurprising, as the “purpose” outlined within the SIMS policy makes clear that the RSSs perform these checks in the furtherance of Company goals and objectives, stating that it is designed to “determine the effectiveness of training programs and ensure continuous improvement.” CX 13.

For example, if it is detected that the same errors are being made by multiple individuals in review of the SIMS reports, the training program may be adjusted to improve the quality of

training to the operators. Tr. 173. These reports are also reviewed by the Company's Safety Department along with the Control Room's Director and Manager to address "recurring trends" detected within these reports. Tr. 173.

RSSs are held accountable for errors made by Operators on their watch. Tr. 142-143; 340-341; 380. In testimony, Director David Cloutier recounted the issuance of discipline to RSS Curt Horning. The discipline received by Mr. Horning for the switching error made by an Operator on his shift is most illustrative of this fact. Because management deemed that Mr. Horning could, and should, have caught and corrected the error in time to prevent the resultant outages, he received discipline for his lack of oversight of an employee on his shift.

Though the Union drew much attention to a switching error²⁷ committed by Operator Marshall Diamond and emphasized the absence of discipline issued to RSS Matthew Urie for his error, the two events are readily distinguishable. Mr. Diamond's switching error occurred in a nearly instantaneous fashion. Because little to no time existed to intervene to stop the error, the RSS on shift was not disciplined for the incident because there "was no realistic level of oversight" that could have stopped the error from occurring. Tr. 571. Mr. Horning's error, by contrast, involved an error where intervention was possible, and the resultant outages were preventable. Tr. 572.

Notably, despite the repeated emphasis on the "team" nature and culture of the Control Room, the Union proffered no evidence to show that Level 1 or Level 2 Operators receive discipline for the missteps of their peers working on shift by their side.

At bottom, though both the Level 2 Operators and RSSs are both NERC-certified operators, it is the RSS that has "ultimate accountability" for what occurs on his shift. Tr. 375. In fact, RSS

²⁷ Mr. Diamond's switching error resulted in outages in Laconia, NH. Consequently, he lost his shift differential and had to make a presentation to his colleagues addressing his error. Tr. 398.

Rossi admitted as much in his 2021 Annual Performance Review, “I take ownership and oversight of all work under the ESCC control area” CX19. The decisions made by the Operators ensure that PSNH meets its reliability goals in the most efficient manner possible. As such, RSSs work to further the overall interests of management in ensuring the safe and reliable transmission of power across the grid.

B. The RSS Uses Independent Judgment in Assigning Work to the Operators

Under *Oakwood Healthcare*, an individual is regarded as having supervisory status if he is capable of assigning “significant duties” to another. Here, the facts clearly show that the RSS, as the individual who is ultimately responsible for the safety and reliability of the transmission system while on-shift, wields considerable power over the tasks performed by the Level 1 and Level 2 Operators. RSSs use their independent judgment in assessing the skill levels of the Operators working on shift when making switching assignments. *See* Tr. 112 (adding that, “[i]n some cases the RSS will take some of those jobs themselves[.]”); Tr. 207. Broadly speaking, for the Operators, the RSS is responsible for coordinating “the day’s work.” *See* Tr. 122 (Mr. Dickie testifies that his expectation is for the RSS to “hand” out work to the Operators working under him) *and* Tr. 490 (RSS Rossi explains that when he “hands” an Operator a job, he is assessing whether the Operator is capable of handling the task at hand).

C. RSS Input Impacts Operator Promotions

RSSs frequently provide upper management with input as to whether Level 1 Operators are appropriately qualified and ready to be promoted to Level 2. Tr. 585-586. Although any qualified operator can sign off on a Level 1 Operator’s Qual Card, Level 2 Operators provide no official input into the final decision as to a candidate’s ultimate readiness to be deemed as fully NERC-qualified. By contrast, a Level 1 Operator cannot progress to Level 2 absent the approval

and sign-off of the RSS, as demonstrated by the delay of Operator Loren Scott's progression based on RSS Urie's feedback.

D. The RSS Uses Independent Judgment in Assigning Work to Field Employees

In *Oakwood Healthcare, Inc.* the Board defined assignment of work as “the act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period), *or giving significant overall duties*, i.e., tasks, to an employee.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006) (emphasis added). “It follows that the decision or effective recommendation to affect one of these – place, time or overall tasks – can be a supervisory function.” *Id.* (emphasis added). Because the RSSs assign field employees to a place, time and/or overall tasks, they are supervisors within the meaning of the Act.

The RSS possesses the authority to assign field employees to a specific place. Broadly speaking, when unplanned events occur on the overnights or weekends, it is the RSS who determines *whether* field crews must be dispatched to address an issue in the first instance²⁸ and, depending on the nature of the outage, *how many* line crews to dispatch. Tr. 217. Importantly, the RSS is the individual empowered to contact the SOC to solicit additional field crews, when required, as the Line Department cannot make that determination on its own. Tr. 218; 567. Depending on the specific need for support, the RSS has the authority to turn to the 1250 call list (to summon substation personnel) as well. Tr. 124-125; 568.

Once summoned, the RSS also has the discretion to sequence the work of field employees by signing off on switching order changes and redirecting field employees to respond to the nature

²⁸ Not every alarm warrants an immediate dispatch of field personnel, as evidenced by the substation alarm that is sometimes triggered by minor disturbances. Tr. 164. The RSS does not react in a rote manner to such alarms, and instead applies discretion in determining whether something has actually “gone awry.” Tr. 163.

of the event. *See* Tr. 221 (discussing the example of an RSS needing to summon a field worker working “downstream” of an event back “upstream” based on his determination of current conditions.)

More specifically, in adhering to RTU procedures, RSSs have the authority to dispatch field personnel to ensure coverage at certain substations that are required to be monitored 24/7. Tr. 592. There are certain other substations that do not typically require 24/7 coverage; however, depending on real time system conditions, the RSS has the authority to upgrade the status of substations as they deem necessary. Tr. 593. Importantly, in making decisions to send field personnel to substation sites, the RSS is not required to obtain the permission of a DSS prior to taking action.

Additionally, the authority of the RSS to hold field employees on site past the end of their shift demonstrates that they possess the authority to assign field employees to a specific time. *See* Tr. 220-221; Tr. 226 (they can keep a field employee on site until “whatever is repaired is repaired.”) With respect to contacting 1250 “on call” personnel (such as field electricians, field switchers, or system electricians), the RSS is the individual who determines whether their services are needed in the first instance. Tr. 124-125. *See also* Tr. 164 (RSS determines whether alarm is a legitimate one warranting the SOC’s dispatch of troubleshooter personnel to a site, or whether it is a “nuisance alarm.”) Additionally, the general ability of the RSSs to summon field personnel during “abnormal and emergency operating conditions” and during “off hours restoration response” times reveals, by definition, an ability to command the work of field personnel during times when they would ordinarily not be working. *See* CX 5; Tr. 120; 150.

II. Secondary Indicia Demonstrate the Supervisory Status of the RSSs

While secondary indicia cannot alone establish supervisory authority, they are relevant factors in all the cases in assessing the role and authority of a disputed individual. *J.C. Brock Corp.*, 314 NLRB 157, 159 (1994). The record is replete with evidence of secondary indicia of supervisory status for the RSSs.

A. RSS Compensation Is an Indicator of Supervisory Status

The RSS is compensated consistent with a supervisor, and not a bargaining unit employee at PSNH. *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002) (difference in terms and conditions of employment are secondary indicia). Unlike bargaining unit personnel, the RSS is an exempt position, and RSSs are eligible for a performance-based bonus as part of compensation. Tr. 95-96. Additionally, RSS base pay is higher than the Level 1 and Level 2 Operators, as is their average annual bonus. CX PX 15.

B. The RSSs Attend Meetings Reserved for Members of Management

The RSS also attends meetings that are solely reserved for management at PSNH. *J.C. Brock Corp.*, 314 NLRB 157, 159 (1994) (attendance at supervisory meetings is secondary indicia). RSSs attend monthly management meetings to discuss “continuous performance improvement,” and include the DSSs, manager, and director of the organization. Tr. 236. Additionally, in late 2020 and/or early 2021, all RSSs were offered Dale Carnegie courses to support leadership development. Tr. 584. Notably, the Level 1 and Level 2 Operators were not offered this training.

C. The RSS Role is Viewed as a Leadership Position by Management and the RSSs Themselves

Participation in these meetings and courses is evidence of both how the Company views the RSS, and of how these workers view themselves. The very creation of the position was

triggered by a recognition by management of the dynamic needs of an expanding organization. As Mr. Dickie explained, after a series of missteps that occurred on shift, PSNH management realized that an additional layer of supervision on nights and on weekends was necessary to ensure the safe and reliable operation of the system.

Both the language of RSS position description and that of the RSSs' self-evaluations reflect an understanding that they are leaders within the organization and carry the responsibility to act accordingly. Unlike the Level 2 Operator position description and very similar to the DSS position description, the RSS position description places great emphasis on the necessity for the RSS to communicate objectives and priorities to the team, to coach and develop the Operators in their group, to role model integrity, and to lead by example. Strikingly, the RSS's own performance evaluations clearly embrace and reflect this view by noting "management of the team," working with "subordinates," and celebrating recognition by an Operator as the "best supervisor" he has ever had. See CX 19-20; Tr. 583-584.

Despite the responses of Operator Von Koss and RSS Rossi about the dynamics of the Control Room, not all elements of the Control Room work experience can be honestly described as falling within a "teamwork" model. The RSSs are not only more seasoned than the Operators, they exist specifically *because* of management's desire to have additional supervision on shift to ensure the safe, efficient, and reliable operation of the transmission grid.

CONCLUSION

PSNH has met its burden of establishing the supervisory status of the RSS. These employees are not subject to the coverage of the Act, and PSNH is appropriately entitled to their undivided loyalty outside of the collective bargaining arena. The Union's attempt to represent these employees via the instant petition is without merit and should be dismissed.

Respectfully submitted,

PSNH d/b/a Eversource Energy

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CERTIFICATE OF SERVICE

I hereby certify that on Friday, May 26, 2023, a true and accurate copy of the above document was e-Filed with the Region, and delivered via email on:

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